UN

UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/AC.26/1996/5/Annex
18 December 1996

ENGLISH ONLY

UNITED NATIONS
COMPENSATION COMMISSION
GOVERNING COUNCIL

REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS APPOINTED TO REVIEW THE WELL BLOWOUT CONTROL CLAIM (THE "WBC CLAIM")

GE.96-64799

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Introduction

1. On 30 July 1993, KUWAIT OIL COMPANY (K.S.C.)1/ ("KOC" or the "Claimant") filed with the United Nations Compensation Commission ("UNCC" or the "Commission") a claim referred to by the Claimant as the "Well Blowout Control Claim" (the "WBC Claim"). In this claim, which was submitted on the category "E" (corporate) claim form, the Claimant seeks compensation in the amount of US$951,630,8712/ for the costs it allegedly incurred in:

a. the planning for the work anticipated on the return of the oil fields of Kuwait to KOC;

b. the work performed to extinguish the well-head fires that were burning upon the withdrawal of Iraqi forces from Kuwait;

c. the initial sealing of the wells to stop the flow of oil and gas; and

d. the making safe of the wellheads so that work on the reinstatement of production could be started.

2. The work described above is referred to by the Claimant as the "Well Blowout Control ('WBC') Exercise."

3. According to the Claimant, the WBC Claim "represents the first claim of [KOC] to be presented to the [UNCC] in respect of direct loss, damage or injury suffered by KOC as a result of Iraq's unlawful invasion and occupation of Kuwait." The Claimant states that the WBC Claim is presented

> ". . . without prejudice to the remainder of the claims which will be made by KOC (e.g., in respect of the damage to, and destruction of facilities such as gathering centres, pipeline systems, tank farms and export terminals), or indeed to those claims which will be made by others involved in the oil and petrochemical industries in Kuwait."

4. The initial submission filed by the Claimant consists of five volumes of documents and a videotape. Volume 1 contains, inter alia, an "E" claim form, the Statement of Claim, the Annual Reports of Kuwait Petroleum Corporation ("KPC"), the parent company of KOC, and its affiliates for the financial years 1989/1990 and 1990/1991, statements by officials of KPC and KOC regarding the preparation for and the execution of the WBC Exercise, and a statement on the same subject by Mr. Thomas Heischman, Project Director at Bechtel Ltd. ("Bechtel"), the company that was retained by KPC

to manage, inter alia, the WBC Exercise. Volume 2 contains an Independent Accountants' Report, prepared by Touche Ross & Co., member firm of Deloitte Touche Tohmatsu International (the "Accountants"), on the costs incurred by the Claimant in respect of the WBC Exercise. Volume 3 contains the Appendices to the Accountants' Report.

5. The Claimant explains that it has submitted "copies of certain of the principal (amongst very many) contracts which relate to the WBC Exercise [and] summaries, prepared by KOC of all the principal contracts." Volume 4 contains the copies of the principal contracts: a letter of intent (and several extensions thereof) headed "Programme Management Contract Oilfield Restoration Project," addressed on 7 November 1990 by Kuwait Petroleum International Ltd. ("KPI"), a subsidiary of KPC to International Bechtel Inc. and agreed to by the latter on 9 November 1990; a contract for project management and related services dated 12 March 1991 between KPC and Bechtel; an agreement dated 25 February 1991 between the Government of the State of Kuwait and Red Adair Company, Inc. relating to firefighting at oil wells in Kuwait; an agreement signed on 27 February 1991 between the Government of the State of Kuwait and Boots & Coots Ltd. relating to firefighting at oil wells in Kuwait; an agreement dated 15 February 1991 between the Government of the State of Kuwait and Wild Well Control Inc. relating to firefighting at oil wells in Kuwait; and an agreement dated 28 February 1991 between the Government of the State of Kuwait and Safety Boss Ltd. relating to firefighting at oil wells in Kuwait. Volume 5 contains summaries of 15 other firefighting contracts and 15 support contracts.

6. The video, 36 minutes long, is made by the IMAX Corporation and is entitled "Fires of Kuwait." It provides an account of how the oilfires in Kuwait were extinguished.

7. The Claimant's initial submission contained only a fraction of the documentation in its possession in support of the Claim. The Statement of Claim explains the rationale of this decision as follows:

> "[C]opies of neither the accounts which have been examined, nor of the supporting invoices, have been attached to the [Accountants'] Report. However, that documentation has been retained by KOC and can be produced if required by the Commission. Indeed, the same is true of any other documentation to which the Commission might wish to refer, but which has not been submitted in conjunction with the WBC Claim. KOC is mindful of the considerable documentary burden with which the Commission and the Panels appointed by it will have to contend in considering claims by those other than KOC or the other companies involved in the oil industry in Kuwait. Potentially, the whole of the documentation which could be submitted in support of the WBC Claim alone, quite apart from further claims which KOC will submit, is vast and could not feasibly be dealt with other than on a

computerised basis. KOC, together with their consultants and legal advisers, have therefore devoted considerable thought to the types and depth of documentation to be submitted in conjunction with the WBC Claim. Clearly a balance had to be struck."

(Emphasis in original.)

8. At its twelfth session, on 23 March 1994, the Governing Council of the Commission (the "Governing Council") mandated the secretariat to commence the processing of the WBC Claim and to include it in one of the Executive Secretary's reports to the Governing Council in accordance with article 16, paragraphs 1 and 2 of the Provisional Rules for Claims Procedure3/ (the "Rules"). In compliance with this mandate, the Executive Secretary on 26 October 1994 reported the WBC Claim to the Governing Council.4/ Following the procedure established by article 16, paragraph 3 of the Rules, a number of Governments submitted their information and views on the Executive Secretary's report for transmission to the Commissioners pursuant to article 32, paragraph 1 of the Rules.

9. At its sixteenth session, on 22 March 1995, the Governing Council appointed a Panel of Commissioners composed of Mr. Allan Philip as Chairman and Messrs. Bola A. Ajibola and Antoine Antoun as Commissioners (the "Panel") to review the WBC Claim. This report contains the recommendations to the Governing Council by the Panel so appointed, pursuant to article 38 (e) of the Rules.5/

10. Subsequent to the appointment of the Panel, on 7 June 1995, the Claimant submitted supplementary evidence consisting of copies of documents, including military orders, that it states were left behind by the retreating Iraqi forces. The Claimant states that "th[e] Submission does not vary the WBC Claim as originally submitted, either as to amount or in other material respects. [ ] The purpose of th[e] submission is to provide the Commission with documentary evidence not available at the time when the WBC Claim was originally prepared."

I. PROCEEDINGS

11. On 27 November 1995, the Panel issued its first Procedural Order. In view of the complexity of the issues raised, the volume of the documentation underlying the Claim and the amount of compensation sought by the Claimant, the Panel decided to classify the WBC Claim as an unusually large or complex claim within the meaning of article 38 (d) of the Rules.6/ The Panel instructed the secretariat to transmit to the Government of the Republic of Iraq ("Iraq") the documents filed by the Claimant in the WBC

Claim, as well as relevant additional documents filed in other Kuwaiti public sector oil company claims. The Panel also invited the Claimant to respond by 19 February 1996 to extensive interrogatories by the Panel annexed to the Procedural Order and requested Iraq to submit by 22 April 1996 its response to the Statement of Claim and related documentation, together with any documentation Iraq might wish to rely on in the present proceedings. Iraq was also requested to submit by the same date its comments on the answers to the interrogatories to be received from the Claimant.

12. On 19 February 1996, the Claimant submitted its Responses to the interrogatories. Pursuant to paragraph 13 of the Procedural Order of 27 November 1995, the Claimant's Responses were transmitted to Iraq upon receipt. Iraq submitted its Response to the Statement of Claim on 22 April 1996. Iraq's submission consisted mainly of legal argument relating to the Commission's jurisdiction and Iraq's liability, as well as of remarks on the technical and financial aspects of the Claim.

13. On 14 May 1996, the Panel issued its second Procedural Order, requesting the Claimant to reply by 28 June 1996 to the further questions and requests by the Panel annexed to that Procedural Order and inviting Iraq to submit by the same date any further written submission and evidence that it wished the Panel to consider in the present proceedings. In the same Order, a date was set for the oral proceedings. The Panel also indicated that it intended to have an on-site inspection performed in Kuwait by a verification team to review the accounts, invoices and other documentation underlying the WBC Claim.

14. On 27 June 1996, Iraq filed a further written submission containing its comments on the Claimant's responses to the interrogatories annexed to the Procedural Order of 27 November 1995.

15. On 28 June 1996, the Claimant submitted its Responses to the further questions and requests by the Panel. Annexed to this submission were 22 volumes of documents, consisting of copies of invoices and other proof of payment documentation relating to the costs of the international firefighting and support services contractors incurred by KOC and captured in the KOC accounting system, as well as a listing of invoices relating to amounts included in the WBC Claim as KOC - Al-Awda costs.7/ According to the Claimant, the latter listing covers approximately 12,000 purchase order records.

16. Having considered the Parties' further submissions, the Panel issued its third Procedural Order on 5 July 1996. The Panel determined, inter alia, that in light of the volume of documentation annexed to the Claimant's submission of 28 June 1996, Iraq was allowed to file a written response thereto by 2 September 1996. As noted in paragraph 24, infra, Iraq did not make any further submissions on substance.

17. From 12 through 17 July 1996, pursuant to paragraph 11 of the Procedural Order of 14 May 1996, a verification team composed of Commissioner Antoun, as the accounting expert member of the Panel, an accounting consultant retained by the secretariat and two members of the secretariat legal staff performed on behalf of the Panel an on-site inspection in Kuwait to examine the accounts, invoices and other documentation underlying the WBC Claim. The working papers compiled by the verification team in the course of the on-site inspection, as well as the working papers of the Accountants, were made available to the Panel and form part of the documentation on which the Panel has relied when making its recommendations.

18. On 27 July 1996, two days prior to the scheduled commencement of the oral proceedings, the UNCC received new documents from Iraq, consisting of a Note Verbale addressed to the Chairman of the Governing Council, a letter addressed to each of the members of the Panel, and a procedural request addressed to the Panel (the "Procedural Request"). Two days later, on 29 July 1996, Iraq submitted a further Note Verbale to the UNCC, which was addressed to the Chairman of the Governing Council. Enclosed therewith was a request to the Governing Council concerning Iraq's participation in the proceedings before the Commission and the financing thereof.

19. In the Procedural Request addressed to the Panel, as well as in the letters addressed to each of its members, Iraq informed the Panel of its intention to submit a request to the Governing Council dealing with the matters referred to above. In view thereof, Iraq requested that the Panel

> "a) [ ] postpone the hearing scheduled to take place in this case from 29 July to 1 August 1996 until the . . . matter of financing the legal defence of Iraq is resolved by the Governing Council;
>
> "b) [ ] determine that [the Panel] requires 'time in excess of that available under article 38(d)' of the Provisional Rules for Claims Procedure to complete the review of the WBC Claim in the sense of the Governing Council decision of 13 December 1995 Concerning Further Procedures for Review of Claims Under article 38[8/] and, once the Governing Council has decided the Request with respect to financing, to grant additional time to Iraq for preparing the legal defence in the WBC Claim in its totality; and

"c) [ ] request the Governing Council for any guidance required under the Provisional Rules for Claims Procedure to take the aforementioned decisions."

20. On 29 July 1996, Iraq presented argument in support of its Procedural Request.9/ On 30 July 1996, the Claimant replied thereto, objecting to Iraq's Procedural Request.

21. After deliberations, on 31 July 1996, the Panel issued a Procedural Ruling addressing Iraq's Procedural Request. The Procedural Ruling reads, in relevant part, as follows:

"[ ] In its first Procedural Order dated 27 November 1995 . . . , the Panel classified the WBC Claim as an 'unusually large or complex claim' within the meaning of article 38 (d) of the [Rules]. The Panel notes that decision 35 of the Governing Council of 13 December 1995 . . . , to which Iraq refers in its Procedural Request, was made after the issuance by the Panel of its first Procedural Order. In view thereof, and based on consultations by the Panel concerning the preparation of decision 35, it is clear that this Panel has at this time no power, under that decision, to extend the time period available to it for completing its report and recommendations to the Governing Council. Therefore, the Panel is not in a position to grant Iraq's request [cited in paragraph 19 (a), supra].

"[ ] Under the Rules, the Panel is required to submit its report and recommendations to the Governing Council not later than 27 November 1996. Even a short postponement of the oral proceedings would disrupt the Panel's workplan and prevent it from submitting its report and recommendations within the above time limit. Therefore, the Panel is not in a position to grant Iraq's request [cited in paragraph 19 (b), supra].

"[ ] In light of the above, the Panel finds that there is no need to address Iraq's request [cited in paragraph 19 (c), supra]."

22. While after the oral presentation of the Procedural Request the representatives of Iraq had continued to attend the proceedings as "observers under protest," after the issuance by the Panel of its Procedural Ruling the Iraqi delegation withdrew from the proceedings. The Panel continued the oral proceedings on the merits of the Claim through 1 August 1996.

23. Upon the completion of the oral proceedings, on 2 August 1996, the Panel issued a Procedural Order requesting further information and documentation from the Claimant by 2 September 1996.

24. On 2 September 1996, the UNCC received two letters from Iraq. One of the letters was addressed to the Chairman of the Governing Council and contained Iraq's request to the Governing Council to grant Iraq additional time "to produce a Comprehensive Statement of Defence on the WBC Claim."

The other letter was addressed to the members of the Panel and informed them of the request contained in the first letter.

25. On the same date, the Claimant submitted its responses to the Procedural Order of 2 August 1996. In that connection, the UNCC also received a letter from Mr. Adel Omar Asem, Deputy Chairman and Director General of Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from the Iraqi Aggression ("PAAC"), the governmental body within Kuwait entrusted with the task of reviewing and submitting claims to the UNCC. The letter addressed the Panel's concerns regarding the issue of double compensation raised in the course of the proceedings. See infra paragraphs 55-61.

26. The Claimant's submission of 2 September 1996 also contained an amendment of the Claim. As mentioned in note 2, supra, the Claimant initially sought in full the costs incurred by it in fighting oil-well fires in the Wafra oil field, which is located in the Divided Zone. The Panel had earlier raised a question regarding the inclusion in the WBC Claim of these costs, particularly in light of the fact that in KOC's Physical Assets and Related Damage Claim, which was filed with the UNCC on 27 June 1994 (the "Physical Assets Claim"), all reinstatement costs with regard to the Divided Zone were shared equally between the Claimant and SAT. In response to this question, the Claimant stated as follows:

> "In 1991, KOC paid the total firefighting costs relating to Wafra, being KD 512,292 (US$1,767,407). As a result of investigations made by KOC in response to Question 65.1 raised by the Panel in its earlier Procedural Orders . . . , KOC can confirm that 50 percent of the firefighting costs in relation to Wafra were in due course charged to [SAT]. This took place after preparation of the Accountants' Report and was not known to Touche Ross. SAT was charged and has duly paid these amounts (KD 265,279) through the regular monthly reconciliations made in the Wafra Joint Operation accounts and the parties' settlement thereof. KOC therefore asks the Panel to treat the WBC Claim as revised by a reduction in the sum of KD 265,278 (US$883,703)."

(Emphasis in original.)10/

27. As part of the proceedings, the Panel held a number of sessions with the assistance of the secretariat. These sessions were conducted in private at the secretariat's headquarters in Geneva. In accordance with article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The secretariat also retained the services of an accounting consultant to assist the secretariat and the Panel in reviewing the accounting materials submitted by the Claimant and in drafting the interrogatories referred to in paragraph 11, supra. The accounting consultant also participated as a member of the verification

team in the performance of the on-site inspection in Kuwait and in the review of the Accountants' working papers. See supra paragraph 17.

II. FACTS AND CONTENTIONS

28. As noted in paragraph 4, supra, KOC is a wholly-owned subsidiary of KPC. As the operating company of Kuwait's public oil sector, KOC is responsible for the maintenance and development of the oil fields and for all crude oil and gas production in Kuwait. KPC, the shares of which are wholly owned by the State of Kuwait, is responsible for the coordination of the public sector of the oil and gas industry of Kuwait and is the holding company of all other companies operating therein, including KOC.

29. Mr. Abdulrazak Mohamed Mulla Hussain, Deputy Chairman and Managing Director for Planning, Administration and Finance of KPC, whose affidavit is in the record, describes the functions of KOC as follows:

> "KOC is responsible for all exploration, drilling and crude oil and gas production in Kuwait and the Divided Zone. Its activities extend from maintenance of the oil fields and extraction of the oil, right through to its export. Thus, KOC owns and operates all of the crude oil production facilities, the pipelines, the crude oil storage facilities, and the crude oil export terminals. It does not sell oil or gas. On the contrary, it produces for the State, the owner of the oil, but is paid for doing so by KPC, which recovers the cost in its overall accounting with the Ministry of Oil."

30. Asked by the Panel to further clarify the legal relationship between KOC and the State of Kuwait, the owner of the oil, the Claimant stated as follows:

> "[T]he State of Kuwait sells the crude oil and gas produced by KOC to KPC, which then either re-sells it on the international market or has it refined in Kuwait by Kuwait National Petroleum Corporation (K.S.C.) ('KNPC') for eventual re-sale. The financial arrangements between the State of Kuwait, KPC and KOC are as follows: ownership of the State's crude oil passes to KPC by way of sale, KPC paying a Transfer Price for it. The Transfer Price is agreed between KPC and the Ministry of Oil, the intention being that the Transfer Price should reflect international market levels. However, the price is subject to adjustment to take account of costs of production, transportation and export. It is KPC, as the seller of all crude oil, refined products and processed gas products into the export and local markets, who receive and retain the prices realised thereby. KPC therefore generates profit by selling crude oil or products at prices which exceed the sum of the adjusted Transfer Price paid to the State and the refining, marketing, selling and transportation costs. The State's earnings are represented by the adjusted Transfer Price received from KPC less the production costs of KOC, which are reimbursed to KOC via KPC."

31. According to the Claimant, subsequent to the Iraqi invasion of Kuwait on 2 August 1990, a crisis team was set up in London consisting of members

of the senior management of Kuwait's oil sector who were out of the country on 2 August or managed to escape in the early stages of the occupation. The Claimant states that, by September 1990, the members of the crisis team became aware that the Iraqi forces were placing explosives around the oil installations in Kuwait and in particular around wellheads. A plan called "Al-Awda" (the "Return") was devised to cope with the anticipated destruction of the oil sector.

32. According to Mr. Abdulrazak Mohamed Mulla Hussain, the Al-Awda project had three priorities: "(1) to supply the local needs for power and fuel; (2) to recover control over the wells that had been blown up by the Iraqis ('well blow-out control'); and (3) to resume export production." According to Mr. Thomas Heischman, at the time Project Director of Bechtel, the company that managed the Al-Awda project (see paragraph 33, infra),

> ". . . [t]he principal objectives of Al-Awda, as the project was conceived, were to establish distribution and supply of oil products to the domestic market, both to the population and to utilities providers, particularly the power stations--in short, to keep Kuwait afloat; to establish sufficient limited production by the refineries to enable the domestic market to be supplied without having to import fuel; to establish limited production of crude oil; to put out whatever facilities fires there might be; to provide support for the well blowout control ('WBC') effort; and to provide whatever infrastructure might be needed to enable these and other objectives to be carried out."

33. Two series of negotiations were started with various companies to contract for the services required to perform the work. On the one hand, negotiations were conducted with a number of firefighting companies and companies providing services and equipment used in firefighting. These negotiations led to the conclusion of four firefighting contracts with Red Adair Company Inc., Boots & Coots Ltd., Wild Well Control Inc. and Safety Boss Ltd., and of sixteen contracts with companies providing services and equipment required by the firefighters. On the other hand, discussions were entered into with several engineering/construction companies with a view to selecting a company that would manage the Al-Awda project. The latter series of negotiations led to the conclusion of a letter of intent and ultimately a contract with Bechtel. Under that contract Bechtel agreed not only to manage the entire project but also to provide a variety of other services, such as firefighting support, engineering, procurement, construction and operations. According to Mr. Heischman, Bechtel was responsible for "manag[ing], co-ordinat[ing] and perform[ing] the whole [Al-Awda] project, apart from the activities of the firefighters and the well services, for which KPC/KOC would be responsible."

34. Throughout its pleadings the Claimant argues that it used its best efforts to control the costs associated with the preparation and the performance of the project. The Claimant states as follows:

> "It is tempting to say that it is self evident that all reasonable endeavours were made to keep the costs of the WBC Exercise to a reasonable level. Certainly there was every incentive to do so, granted the huge economic losses being suffered as a result of the occupation and ensuing hostilities, and no reason to do otherwise. Equally, however, it has to be recognised that the chaotic and dangerous conditions in Kuwait inevitably resulted in some premium element being included in, e.g., rates for expatriate personnel provided by contractors, and there must also have been an element of premium charging attempted by contractors because of the overwhelming urgency of KOC's need. Nevertheless, in negotiating its contracts KOC bargained hard and with considerable success . . . . Furthermore, purchases made through Bechtel were virtually always made on the basis of competitive tendering . . . , and were only made after approval by KOC. Furthermore, it will be seen from . . . the Touche Ross Report that they, who have had the opportunity of gaining first-hand knowledge of the accounting and cost-control systems operated by KOC and Bechtel, and who have examined a number of the contracts, have themselves come to the conclusion that the costs claimed were properly controlled and were in fact incurred."

35. According to the Claimant, the initial planning of the project assumed the worst possible extent of damage to the infrastructure of Kuwait and 200 wells being on fire. Upon the liberation of Kuwait, however, it appeared that the damage to the infrastructure was not as extensive as originally anticipated, but that many more wells than foreseen were ablaze. Mr. Heischman describes the situation in Kuwait upon the liberation as follows:

> "Although there was substantial infrastructure damage, it was a good deal less than the worst-case scenario which we had envisaged in the planning stage. For example, there were sufficient port facilities which could be operated, subject to being cleared of mines; the main airport was usable; the airport refuelling facilities were substantially intact; and a proportion of the country's filling stations were operable. On the other hand, the extent of the well blowout problem was far greater than any of us had envisaged. This meant that the first priority was to control the burning and gushing wells."

36. According to the Claimant, out of a total of 914 operational wells in Kuwait, 798 wellheads had been detonated by the Iraqi forces, of which 603 were on fire, 45 were gushing oil but not on fire, and 150 although damaged were neither on fire nor gushing oil. Considering the greater than expected number of wells to control, more firefighters than originally foreseen were employed. According to Mr. Mohammed Al-Jazzaf, Deputy Managing Director, Operation Services, of KOC, whose affidavit is in the record, this "led to the expansion of the firefighting effort to some 27

firefighting teams" from the United States, Canada, Iran, Romania, Hungary, the Soviet Union, France, the United Kingdom, China, and Kuwait.

37. The last well-head fire was extinguished on 6 November 1991, eight months after the liberation of Kuwait. To convey a sense of the magnitude of the work performed, Mr. Heischman provides the following statistics:

> "• Sea water supplied to [the firefighters and their support teams] rose to a maximum of 25 million gallons a day, with a total of 1.5 billion gallons of water being supplied;
>
> "• To supply this water over 400 kilometres of pipeline was laid;
>
> "• A total of 353 water lagoons, each with a capacity of at least 250,000 gallons, were excavated, lined and filled with water to support the firefighters. This project alone required 50 man years of labour (assuming a 10 hour day seven days week);
>
> "• 280 kilometres of special access ways constructed into wellhead areas through areas either impassable or covered by lakes of oil;
>
> "• To support this construction effort over 1.8 million cubic metres of gatch (a sand and gravel mix) was excavated and hauled into the oil fields;
>
> "• A total of 538 aircraft and 78 sea vessels were used to ship over 186,000 tonnes of equipment into Kuwait. On any given day as many as three sea vessels and two air cargo planes were being unloaded;
>
> "• Over 5,800 individual pieces of equipment were mobilised representing one of the largest non-military vehicle fleets in the world;
>
> "• Over 68 square miles of land was cleared of over 20,000 pieces of unexploded ordnance;
>
> "• Accommodation for in excess of 10,000 personnel was either built or refurbished. Six full service dining halls provided 3.5 million meals for a daily average of about 27,000 meals."

38. Once the wells had been extinguished, they were capped. Capping consists of putting a temporary plug on the well. The well having been capped, it then needed to be "post-capped." Post-capping rendered the well permanently safe and enabled a decision to be made whether the well should be closed down permanently or be brought back into production. According to the Claimant, "[p]ost-capping is the final stage of the WBC Exercise. It was completed in March 1993, with the exception of 56 wells where particular difficulties apply . . . ." Because the costs of post-capping had not yet been finally analyzed at the time of the filing of the WBC Claim, only a limited portion of those costs was included therein. The remainder of the post-capping costs is claimed in KOC's Physical Assets Claim, see supra paragraph 26.

39. After the fires had been extinguished, the Al-Awda project was redesignated the "Al-Tameer" (the "Rebuilding") project.11/ The Al-Tameer project continued the work of Al-Awda and took it beyond the WBC stage into the rebuilding and reconstruction stage. The bulk of the costs incurred in the rebuilding and reconstruction stage are covered by other claims, including the Physical Assets Claim.

40. While the WBC Claim is filed by KOC, not all contracts relating to the WBC Exercise were signed by that party. According to the Claimant, "[t]hose contracts with firefighters and other contractors which were made prior to the Liberation were concluded in the names of the Government of Kuwait, KPC or KPI, for reasons dictated in large measure by [the United States Office of Foreign Assets Control ('OFAC')] licensing requirements [ ] and by credit considerations."12/ The Claimant maintains, however, that "[a]ll such contracts were . . . assigned to KOC after the Liberation and any payments which had already been made by [the Government of Kuwait] or KPC were charged to KOC, who were credited with any assets thereby purchased." The Accountants state that "[their] work in this matter was designed to ensure that the costs originally contracted to by parties other than KOC were correctly included in KOC's claim." The Claimant concludes that "even in respect of costs incurred under those contracts which were initially made by the Government of Kuwait, KPC or KPI, it is KOC which is the appropriate entity to make the claim."

41. In response to a question by the Panel regarding the funding of the WBC Exercise, the Claimant acknowledged that, as reflected in KPC's Annual Reports for the financial years 1990/1991 and 1991/1992, the funding was provided by the Ministry of Oil. The Claimant stated as follows:

> "It will be clear from the evidence available to the Commission that KOC is, in effect, a cost centre funded by KPC and therefore, ultimately, by the Ministry of Oil. The WBC Claim has been made by KOC because it is the entity which initially met the costs when incurred. The Ministry of Oil had to provide the funding for KOC to pay for the WBC exercise (as it does for all of KOC's operations); otherwise KOC would have had to borrow the funds. This is the normal funding mechanism used within Kuwait's Oil Sector, and does not affect the decision that KOC is the appropriate party to make this claim."

42. Iraq denies any responsibility for the oil-well fires, alleging that "there were no explosives planted by the Iraqis at all." According to Iraq, "somebody working for the interest of Iraq's enemies planted explosives in order to incriminate Iraq and throw the responsibility of the firing of oil wells on the Iraqi Armed Forces . . . ." Iraq argues as follows:

> "Iraq was accused to have set fire in the Kuwaiti oil wells during the withdrawal of the Iraqi troops. This accusation was unfounded. A long time before that accusation was made, the coalition bombing resulted in many fires in the area of Kuwait. This is a well-known fact. An international research team visited Iraq between 23 August and 5 September 1991 and interviewed the Assistant Manager of the Basrah Refinery who advised the team that the refinery was set on fire as a result of the coalition air raids which started on 17 January 1991. On 23 February 1991, [t]he Government of Iraq denied its responsibility for any fire. Iraq's Revolutionary Command Council (RCC) invited the Security Council to conduct an inquiry to ascertain the degree of damage, civil and military, resulting from the coalition bombing in Kuwait. The Security Council rejected the invitation. On the same day, the Rumaila oil field was set on fire due to the coalition bombing using napalm bombs."

43. Quoting newspaper and news magazine articles, Iraq argues that "at a time when Iraqi troops were supposed to have set fire to the oil wells between 16-22 February 1991, they were actually the subject of very intensive air raids for a period of four weeks." Accordingly, "[the Iraqi troops] were isolated from their headquarters because of the complete destruction of communication network and they were without any air cover." Iraq goes on to state:

> "From 2 August 1990 until 17 January 1991 when the coalition bombing started there was not a single fire on the Kuwaiti oil wells. This means that intervening events took place and broke the chain between the cause and the result whether the causation was factual or legal. This can be substantiated by the fact that no well fire was seen before the allied bombing."

44. Iraq devotes a substantial part of its argument to the alleged inconsistencies between the documentation submitted by the Claimant and other sources of information referred to by Iraq, as regards the number of oil wells on fire, gushing oil, or otherwise damaged. Iraq stresses the importance of having reliable information, stating that "it is impossible to process a multimillion dollar claim of such dimensions without absolutely reliable and sufficient data."

45. Iraq challenges the probative value of the affidavits of the Claimant's witnesses, suggesting that the fact that most of the Claimant's witnesses are Kuwaiti nationals, as well as the fact that many of them were outside of Kuwait at the time of the invasion and occupation, undermines their credibility. In any event, according to Iraq, the documents fail to prove that Iraq was responsible for the well blowouts.

46. Iraq also denies the authenticity of the alleged official Iraqi documents submitted by the Claimant in its Supplementary Evidence. See supra paragraph 10. According to Iraq, "[t]he documents presented by the Kuwaitis are forgeries and do not belong to the Iraqi Army." Iraq states

that "[t]hese photocopied documents are not consistent with customary regulations of Iraqi military correspondence. Therefore, these documents have not been produced by the Iraqi Army because they are alien to our method of producing documents."

III. PRELIMINARY ISSUES

A. Categorization of the claim

47. As noted in paragraph 1, supra, the WBC Claim is submitted on a category "E" (corporate) claim form. The Claimant states that, in terms of the loss types listed on the category "E" claim form, the WBC Claim falls within the category of real property claims and is for compensation for losses which are compensable under United Nations Security Council resolution 687 (1991) and sub-paragraph (c) of paragraph 21 of Governing Council decision 7.13/

48. The issue arose in the course of the proceedings as to whether the WBC Claim is properly categorized as a category "E" (corporate) claim, or whether it should be more properly submitted as a category "F" (government) claim. A related question is whether KOC is the proper party to assert the Claim.

49. The proper categorization of the WBC Claim was addressed by the Panel in the interrogatories annexed to the Procedural Order of 27 November 1995 and subsequently also by Iraq. Taking note of the Claimant's argument to the effect that "the WBC Claim is for compensation for losses which have been specifically identified as compensable by the Governing Council in sub-paragraph (c) of paragraph 21 of decision 7, i.e., direct losses suffered as a result of actions by officials or agents of the Government of Iraq," the Panel put the following questions to the Claimant:

> "The Panel notes that the provision cited by the Claimant, sub-paragraph (c) of paragraph 21 of Governing Council decision 7, is part of section II of that decision, entitled 'Criteria for processing claims of corporations and other entities,' and that the WBC Claim has been brought by KOC, a corporation.
>
> "The Panel further notes that paragraph 35 of Governing Council decision 7, which is part of section III of that decision, entitled 'Criteria for processing claims of governments and international organizations,' provides that 'payments are available with respect to direct environmental damage and the depletion of natural resources, as a result of Iraq's unlawful invasion and occupation of Kuwait.' Sub-paragraph (a) of paragraph 35 further specifies that '[t]his will include losses or expenses resulting from . . . [a]batement and prevention of environmental damage, including expenses directly

relating to fighting oil fires and stemming the flow of oil in coastal and international waters; . . . .' (Emphasis added.)

"It appears to the Panel that, according to its wording, sub-paragraph (a) of paragraph 35 of Governing Council decision 7 was specifically intended to apply, inter alia, to the type of losses or expenses for which compensation is being sought in the WBC Claim.

"Question 2.1: In view of the above, can the Claimant clarify the submission of the WBC Claim as a category 'E' (corporate) claim? [ ]

"Question 2.2: More particularly, what is the Claimant's understanding of the relationship between sub-paragraph (c) of paragraph 21 and sub-paragraph (a) of paragraph 35 of decision 7?"

50. The Claimant stated in its response that the WBC Claim is properly filed as a category "E" claim, "because it seeks to recover compensation for financial costs incurred by KOC, a corporation, as a direct result of damage and destruction caused by Iraq in the oil fields operated by KOC." The Claimant went on to state:

"KOC agrees with the Panel's further assessment that the WBC Claim may be characterised as a claim for 'losses or expenses resulting from . . . abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil.' The WBC Claim arises from KOC's expenses incurred in fighting and extinguishing the oil fires.

". . .

"KOC considers that the types of compensable loss expressly referred to by the Governing Council in decision 7, rev 1, were not intended to be exhaustive, but to comprise illustrations of the types of situation which may give rise to compensable losses, so long as the principal jurisdictional criterion is established: being the basic statement of Iraq's liability contained in paragraph 16 of UNSC resolution 687 (1991).

". . .

"[I]n its categorisation of the various types of payments referred to in decision 7, rev 1, the Governing Council was making a procedural distinction, not--it is submitted--a substantive one. Corporations such as KPC can fall into both 'E' and 'F' categories for the purposes of decision 7, rev 1. The fact that paragraph 35 of decision 7, rev 1 is appended to the latter part of the decision dealing with 'F' Claims owes more to the evolution of the drafting of the decision than to any deliberate policy of the Governing Council to exclude claimants from being compensated for such losses. Such a policy would have been inconceivable (and beyond the powers of the Governing Council ordained by the Security Council by UNSCR 692)."

(Emphasis in original.)

51. The issue before the Panel is the apparent inconsistency between the submission of the WBC Claim as a category "E" claim, on the one hand, and the criteria applicable to the subject matter of the Claim, on the other. While under Governing Council decision 7 "public sector enterprises" such as KOC were envisaged to file their claims under category "E," the criteria

that appear to specifically apply to the WBC Claim are set out under category "F." The Panel concurs in the view that the categorization of a claim as an "E" or "F" claim does not necessarily entail any substantive consequences in terms of the law applicable to such claim. In this connection, it should be noted that paragraph 16 of Security Council resolution 687 (1991) provides for the compensability of, inter alia, "environmental damage and the depletion of natural resources," without making any qualifications as to the legal subject or entity eligible to make such claims.

52. In light of the above, the Panel concludes that it could not have been the Governing Council's intention, when drafting decision 7, to exclude the applicability of the criteria listed under paragraph 35 of decision 7 to a claim filed by a corporate entity, should the types of losses described thereunder, including costs incurred in fighting the oil-well fires, have been sustained by such an entity, or to declare corporations ineligible to seek compensation for such losses. Indeed, paragraphs 17 and 31 of decision 7 specifically state that "[t]he following criteria are not intended to resolve every issue that may arise" with respect to category "E" and "F" claims.

53. The Panel is also of the opinion that, even if paragraph 35 of decision 7 were not considered to apply to claims brought by corporations, costs incurred in fighting oil-well fires would in any event be compensable under the general language of sub-paragraph (c) of paragraph 21 of Governing Council decision 7, which is the provision relied on by the Claimant in its Statement of Claim, see supra paragraph 47.

54. Furthermore, the Panel notes that under the general principles of international law relating to mitigation of damages, which have also been recognized by the Governing Council,14/ the Claimant was not only permitted but indeed obligated to take reasonable steps to fight the oil-well fires in order to mitigate the loss, damage or injury being caused by those fires to the property of the Kuwaiti oil sector companies and the State of Kuwait.

B. The Claimant's standing

55. As described in paragraph 41, supra, the Claimant acknowledges that, although the costs incurred in the WBC Exercise were initially expended by KOC, the WBC Exercise was ultimately funded by the Ministry of Oil. Subsequently, according to the Annual Report of KPC for the financial year 1992/1993,

". . . an agreement was reached [between the Ministry of Oil and KPC] such that part of the costs charged to the Ministry resulting from the Iraqi invasion would be repaid over a period of thirty six months. The repayment takes the form of a monthly deduction from the costs of crude oil charged by the Ministry to the Corporation. At the year end 29 instalments were outstanding amounting to some KD 160 million."

56. Given that the costs incurred in the WBC Exercise were ultimately borne and shared by the Ministry of Oil and KPC, the issue arises whether KOC is the proper claimant in this Claim. In the course of the proceedings, the Panel asked the Claimant to elaborate on this point. The Claimant argued in response as follows:

"The WBC Claim has been made by KOC because it is the entity which initially met the costs when incurred. The Ministry of Oil had to provide the funding for KOC to pay for the WBC exercise (as it does for all of KOC's operations); otherwise KOC would have had to borrow the funds. This is the normal funding mechanism used within Kuwait's Oil Sector, and does not affect the decision that KOC is the appropriate party to make the claim. The financial arrangements in place in Kuwait's Oil Sector will ensure that there is no duplication of compensation and KOC confirms that neither any other Oil Sector entity nor the State of Kuwait/Ministry of Oil has made a claim to the UNCC for the costs included in the WBC Claim."

57. The Panel also asked the Claimant to clarify as to why KOC, the operating company of Kuwait's oil sector, was the claimant in this Claim, and whether KOC was doing so on its own behalf or on behalf of the State. The Claimant stated in reply as follows:

"KOC seeks reimbursement of the costs of fighting the oil fires on its own behalf . . . KOC was the Oil Sector company responsible for bringing the damaged oil wells under control and expended the sums underlying this claim. The costs of the firefighting were charged as extraordinary costs in the KOC accounts. The costs of fighting the oil fires were thus KOC's direct loss. As the operator of all Kuwait's onshore oil fields, it was essential for KOC to oversee and organise the WBC exercise. It was inevitable, therefore, that KOC would pay these costs, since it owns the facilities in the oil fields, and has responsibility for oil production and all operations in the field. KOC was thus the only organisation able to direct and manage the well blowout control exercise and make the payments for the work in question. After the task of extinguishing the fires was completed, KOC was the only organisation with the knowledge and records necessary to prepare and present this claim. . . . Strictly, in summary, KOC makes the WBC Claim on its own behalf and not on behalf of the State."

58. The Claimant's standing and the related risk of double compensation were further addressed during the oral proceedings. On 2 August 1996, upon the completion of the oral proceedings, the Panel issued a Procedural Order asking the Claimant to "comment on KOC's standing to pursue a claim for costs part of which ultimately were borne by another entity, particularly in light of the fact that neither the Government of Kuwait nor KPC are co-

claimants in this case, and the ensuing risk of double compensation." In its reply, the Claimant stated as follows:

> "All KOC's expenses are met in due course by its parent company, KPC, under the arrangements in place between the companies. The extraordinary losses suffered by KOC (and by other Oil Sector Companies) as a result of Iraq's invasion and occupation, would have caused KPC, the parent company, to be insolvent. Exceptional measures were taken to deal with this situation, and certain specific sums were borne by the Ministry of Oil, and are thus at present carried by the Government. [ ] In due course, these exceptional charges will need to be resolved. This will depend on many factors. Meanwhile, it is accepted within the Oil Sector that all payments by way of compensation will be credited to whichever body is carrying the loss at the time. [ ] To the extent that costs included in the WBC Claim are at present borne by either KPC or the Government of the State of Kuwait, KOC . . . has no entitlement to retain compensation awarded by the UNCC in respect of such costs."

59. The letter of 27 August 1996 from Mr. Adel Omar Asem, Deputy Chairman and Director General of PAAC, to the Executive Secretary of the UNCC also addressed the issue. In the letter, it was confirmed that

> ". . . [KOC] is the only entity within Kuwait which has made a claim in respect of the costs included in the [WBC Claim]. No claim for these costs has been submitted by [KPC], or by the Ministry of Oil or, indeed, by any other entity in Kuwait. Accordingly, there is no risk of the UNCC awarding compensation in relation to any other claim which could potentially duplicate compensation awarded in respect of the [WBC Claim]."

60. The Panel finds that the issue concerning the Claimant's standing should be resolved, and the related risk of double compensation addressed, in light of the structure of Kuwait's oil sector as a whole, taking into account the respective roles of the companies operating therein and the Claimant's statements and clarifications summarized above. Apart from the Claimant's own acknowledgment that it "has no entitlement to retain compensation awarded by the UNCC in respect of" costs borne by KPC and the Ministry of Oil, the Panel considers it particularly relevant that, according to KPC's Annual Reports, "[KPC] and its subsidiaries perform certain activities on behalf of the Ministry of Oil primarily in relation to (a) the exploration for and production of crude oil and natural gas in Kuwait . . . . The costs and revenues of these activities are accounted for to the Ministry by [KPC]." Given that the exploration for and production of crude oil and natural gas in Kuwait is the function of KOC, the Claimant in this Claim, it appears to the Panel that KOC in all its operations acts, in effect, on behalf of the Ministry of Oil.

61. In view of the above, and taking note of the presence of the representatives of the parent company, KPC, and of the Government of Kuwait at the oral proceedings, the Panel concludes that the WBC Claim must be

deemed to have been made by KOC on behalf of Kuwait's public oil sector as a whole. Consequently, the Panel determines that the Government of Kuwait as well as KPC will be bound by the decision to be rendered by the UNCC in this Claim and thus they will be estopped from bringing the same claim before the UNCC.

C. Other preliminary issues

62. As explained in paragraphs 42-46, supra, Iraq objects to the Commission's jurisdiction over the WBC Claim, asserting that the oil-well fires were not a direct result of Iraq's invasion and occupation of Kuwait as required by Security Council resolution 687 (1991). The gist of Iraq's argument is that there was an intervening event between Iraq's invasion and occupation of Kuwait and the oil-well fires--the allied air raids. According to Iraq,

> ". . . the bombing was an interrupting event between Iraq's entry and the result, namely the oil well fire, rendering the damage or loss indirect, thus it makes the subject matter fall outside the jurisdiction of paragraph 16 of the Security Council's Resolution 687 and the requirements established by the Governing Council of the UNCC."

63. The issue raised by Iraq is closely related to the substantive aspects of the WBC Claim, in particular the law applicable before the Commission and the legal basis of Iraq's liability. Consequently, the Panel will address the issue infra, in connection with these two topics.

64. Iraq also raises the point that, as explained in paragraph 40, supra, some of the contracts relating to the WBC Exercise were initially signed by the Government of Kuwait and KPC and not by KOC, the entity that brings the Claim. According to the Claimant, such contracts were assigned to KOC after the invasion and occupation and any payments which had already been made by the Government of Kuwait, KPC or KPI were charged to KOC, which was credited with any assets thereby purchased. Iraq suggests that these arrangements involve a risk of double compensation.

65. The Panel agrees that it will be necessary to verify that the costs initially incurred by the Government of Kuwait, KPC or KPI were ultimately borne by KOC. The Panel's findings in this regard are explained in paragraphs 156-60, infra.

IV. LEGAL FRAMEWORK

A. Applicable law and criteria

66. The law to be applied by the Commission has been set out in article 31 of the Rules. The article provides as follows:

> "In considering the claims, Commissioners will apply Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law."

67. According to paragraph 16 of Security Council resolution 687 (1991), which under article 31 of the Rules forms part of the law applicable before the Commission, "Iraq . . . is liable under international law for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait." The Panel notes that, when making resolution 687 (1991), the Security Council acted under Chapter VII of the United Nations Charter, i.e., it exercised its powers under that Chapter to maintain and restore international peace and security.15/

68. The Security Council having determined, under Chapter VII of the Charter, that compensation in accordance with international law should be provided to foreign Governments, nationals and corporations for any direct loss, damage or injury sustained by them as a result of Iraq's unlawful invasion and occupation of Kuwait, in order to restore international peace and security, the issue of Iraq's liability has been resolved by the Security Council and constitutes part of the law applicable before the Commission.16/

69. Security Council resolution 687 (1991) requires that the loss, damage or injury for which compensation is being sought be a direct result of Iraq's invasion and occupation of Kuwait. This requirement has been further defined in paragraph 21 of Governing Council decision 7. Reaffirming that "payments are available with respect to any direct loss, damage, or injury to corporations and other entities as a result of Iraq's unlawful invasion and occupation of Kuwait," paragraph 21 goes on to specify that "[t]his will include any loss suffered as a result of . . . [m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991; . . . [and] [a]ctions by officials, employees or agents of the Government of Iraq or its controlled

entities during th[e] period [2 August 1990 to 2 March 1991] in connection with the invasion and occupation."

70. While on its face related to category "F" claims, paragraph 35 of Governing Council decision 7 is also relevant in this regard, as discussed in paragraphs 49-52, supra. Paragraph 35 reads, in relevant part, as follows:

> "These payments are available with respect to direct environmental damage and the depletion of natural resources as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include losses or expenses resulting from:
>
> "(a) Abatement and prevention of environmental damage, including expenses directly relating to fighting oil fires and stemming the flow of oil in coastal and international waters;
>
> ". . . ."

71. The fact that paragraph 35 is contained in the part of Governing Council decision 7 dealing with category "F" claims does not, in the Panel's view, mean that the principle contained therein cannot be applied to category "E" claims. As explained in paragraph 51, supra, in view of paragraph 16 of Security Council resolution 687 (1991), which provides for the compensability of "environmental damage and the depletion of natural resources," the distinction between category "E" and "F" claims should not be considered as a substantive one entailing consequences in terms of the law to be applied.

72. Applying the law and criteria stated above, the Panel now proceeds to resolve the issue of whether the loss, damage or injury for which compensation is being sought in the WBC Claim can be considered a direct result of Iraq's invasion and occupation of Kuwait.

B. Liability and causation

1. The Claimant's argument

73. The Claimant states that "the deliberate firing of the oil fields of Kuwait [by the withdrawing Iraqi forces] [was] [p]robably the most graphic effect of the occupation and the ensuing hostilities between Iraq and the coalition forces operating under the auspices of the United Nations." Consequently, according to the Claimant, "[t]he physical damage giving rise to the necessity to incur the costs concerned having been inflicted deliberately and wantonly by the Iraqi forces, the WBC Claim is for compensation for losses which have been specifically defined as compensable

by the Governing Council in sub-paragraph (c) of paragraph 21 of decision 7 rev. 1, i.e., direct losses suffered as a result of actions by officials or agents of the Government of Iraq."

74. The Statement of Claim contains affidavits by senior officials of Kuwait's oil sector supporting the Claimant's assertion that the Iraqi forces were responsible for the well blowouts. The Claimant also suggests that the fact that the oil fields were set on fire by Iraqi forces is a matter of public knowledge. The Claimant states that "[t]he extent, in general terms, of the devastation wreaked upon the oil fields of Kuwait was the subject of much media coverage during and immediately after the period of hostilities between the coalition forces and those of Iraq in January and February 1991."

75. From the legal point of view, the Claimant argues that, "[e]ven if the damage had been inflicted otherwise [than by the retreating Iraqi forces], e.g., by bombing from Coalition forces, Iraq would still be liable to compensate Kuwait for the damage caused during Iraq's unlawful occupation of Kuwait, including the full costs incurred by KOC and the subject of the WBC claim." In support of its argument, the Claimant refers to paragraph 21 (a) of Governing Council decision 7, according to which Iraq is liable for any loss suffered as a result of "military operations or threat of military action by either side."

76. In its Supplementary Evidence filed on 7 June 1995 the Claimant submitted additional documentation in support of its claim. This documentation consists of an Introductory Statement and copies, with English translation, of 22 allegedly official Iraqi documents. The documents are of a varying nature, including documents purporting to allocate "responsibilities for well demolition" among the various units of the Iraqi armed forces, providing instructions for "deferred detonation" of certain oil fields, detailing "fire plans for the destruction of oilwells," etc.

77. In support of the above documentation, the Claimant refers to a report by Mr. Walter Kälin, Special Rapporteur of the United Nations Commission on Human Rights, who visited Kuwait in the aftermath of the Gulf War.17/ One of the documents presented by the Claimant as part of its Supplementary Evidence was also included in the Special Rapporteur's report. The document, which is dated 2 December 1990 and classified as "Top-Secret," was issued by the Operational Headquarters of the 18th Battalion of Field Engineers, a unit of the Iraqi Army, and contains

"Directives for the demolition of the wells that are being prepared for eventual sabotage."

78. At the oral proceedings the Claimant's witnesses presented further testimony on the subject. Mr. Ahmed Murad, Manager, Systems Development, of KOC, who at the relevant time was in Kuwait, testified that he did not witness, nor was aware, of any allied bombing of the oil wells, but that he did see, after the liberation, wellheads with explosives positioned on them. He explained that the explosives were still on the wellheads and had not been detonated because the wires had for some reason been cut. According to Mr. Murad, after the liberation there were more than one hundred oil wells in Kuwait on which explosives had been placed but which were still intact.

79. The Claimant also presented at the oral proceedings excerpts from video films showing wellheads with undetonated explosives on them. These films are part of the file in this Claim.

2. Iraq's argument

80. As explained in paragraphs 42-46, supra, Iraq denies any responsibility for the oil-well fires, arguing that the fires were caused by the allied air raids. According to Iraq,

> ". . . [t]he decision to pull Iraqi forces out of Kuwait was issued swiftly and immediately. This decision did not refer to any firing of wells at the final stages of withdrawal. On the contrary the destruction and fire of oil wells occurred because of coalition bombing and bombardment, whether by direct hits or shrapnel, before the date of withdrawal."

81. In support of its assertion Iraq refers to newspaper and news magazine articles, including an article published in the Middle East Economic Survey, vol. XXXIV (No. 22), on 4 March 1991. This article, headed "All Producing Wells Damaged in Kuwait," states in relevant part:

> "A devastating assessment of the war damage to oil wells and other oil installations in Kuwait has emerged from the first on-the-spot report by returning Kuwaiti oil officials. According to initial surveys by the Kuwaiti Oil Company (KOC), the producing arm of the Kuwait Petroleum Corporation (KPC), all Kuwait's producing oil wells have been set ablaze or otherwise damaged by Iraqi sabotage or allied bombing.
>
> "Mr. Musab al-Yasin, KOC General Superintendent for Oil Reservoirs, told Reuters on 1 March: 'Our provisional assessment is that they have damaged every producing well. Our feeling from checks our personnel have done so far is that all the wells have been exploded.' Wells that had not caught fire when blasted by Iraqi explosives had

> been badly damaged and were spouting crude oil. Some wells had been destroyed by allied bombing, he said, but the vast majority had been blown up by occupying Iraqi forces. Mr. Yasin and other KOC officials were being interviewed at the Ahmadi oil complex in Kuwait.
>
> ". . .
>
> "KOC executives were quoted as saying that allied bombing had set fire to as many as 34 wells, and had also caused varying degrees of damage, from minor to total loss, to some 13 out of 18 important oil gathering centers in the country."

82. Iraq suggests that the fact that undetonated explosives were found on the wellheads after the liberation resulted from a conspiracy against Iraq. Iraq asserts as follows:

> "The Government of Iraq would also like to stress the fact that somebody working for the interest of Iraq's enemies planted explosives in order to incriminate Iraq and throw the responsibility of the firing of the oil wells on the Iraqi Armed Forces which we categorically deny. These explosives could have easily been picked up and planted by Iraq's enemies and this is not an unexpected act from this category of individuals, especially under such circumstances. This could also be an act committed in order to shift the accusation from the coalition forces whose bombing and shelling led to the firing of the wells in the first place."

83. As noted above, Iraq also denies the authenticity of the documents submitted by the Claimant in its Supplementary Evidence. See supra paragraph 46. According to Iraq, the fact that the documents "are not consistent with customary regulations of Iraqi military correspondence" suggests that they are forgeries.

84. From the legal point of view, Iraq argues that, "[a]ccording to all known systems of jurisprudence, a (direct loss) is that loss which emanates directly from the act without any interrupting event where the result is directly connected." (Parenthesis in original.) Consequently, according to Iraq, "[d]irect damage or loss dictates that the link of causation between the (act) and the (loss) must be continuous and uninterrupted." (Parentheses in original.) Iraq concludes that, "[i]n the case of Kuwait oil wells the chain was broken by the coalition bombing, whether from air or by artillery or rocket bombardment which covered the whole area of the Iraqi defensive positions including the sites of oil wells."

3. The Panel's findings

85. Based on the evidence and testimony presented, the Panel finds that, although part of the damage for which compensation is being sought in the WBC Claim may be a result of the allied bombing, the bulk of the oil-well fires was directly caused by the explosives placed on the wellheads and

detonated by Iraqi armed forces. In this regard the Panel finds the testimony presented by the Claimant's witnesses at the oral proceedings, which included videotapes of explosives placed on the wellheads, as well as the documentation attached to the Kälin Report, supra paragraph 77, particularly convincing. The Panel also notes that the evidence referred to by Iraq is consistent with this conclusion. See supra paragraph 81 (quoting a news magazine article stating that "the vast majority [of the oil wells] had been blown up by occupying Iraqi forces.")

86. As described above under the section "Applicable Law and criteria," according to paragraph 21 (a) of Governing Council decision 7, Iraq's liability includes any direct loss, damage or injury suffered as a result of "[m]ilitary operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991." (Emphasis added.) This decision is, in the Panel's view, in accordance with the general principles of international law. Consequently, Iraq is liable for any direct loss, damage or injury whether caused by its own or by the coalition armed forces. Iraq's contention that the allied air raids broke the chain of causation therefore cannot be upheld.

C. The nature and purpose of the proceedings

87. In light of the conclusions reached above, the task that the Panel is entrusted with in the present proceedings is twofold. First, the Panel must determine whether all the costs included by the Claimant in the WBC Claim can be considered a direct result of Iraq's invasion and occupation of Kuwait and thus compensable under the applicable law and the criteria established by the Governing Council. Second, the Panel must verify, using expert advice where necessary, that the costs for which compensation is being sought in the WBC Claim have in fact been incurred by the Claimant in the execution of the WBC Exercise.

88. This understanding of the role of Commissioner Panels operating within the UNCC framework, according to which determinations of compensability and the verification of compensable claims are their main tasks, is consistent with the Secretary-General's report to the Security Council dated 2 May 1991. In his report, the Secretary-General described the function of the Commission as follows:

> "The Commission is not a court or an arbitral tribunal before which the parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity, evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-

> judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element.
>
> ". . .
>
> "The processing of claims will entail the verification of claims and evaluation of losses and the resolution of any disputed claims. The major part of this task is not of a judicial nature; the resolution of disputed claims would, however, be quasi-judicial. It is envisaged that the processing of claims would be carried out principally by the commissioners. Before proceeding to the verification of claims and evaluation of losses, however, a determination will have to be made as to whether the losses for which claims are presented fall within the meaning of paragraph 16 of resolution 687 (1991), that is to say, whether the loss, damage or injury is direct and as a result of Iraq's unlawful invasion and occupation of Kuwait."

"Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)" (S/22559), para. 7, pp. 9-10.18/

89. As described in section II ("Proceedings"), supra, the Panel has made every effort to ensure that the requirements of due process have been met. Given the time frames for the review of claims prescribed by the Rules and the volume of documentation underlying the WBC Claim, the Panel has not relied solely on the Parties' contribution in order to verify the Claim. The Panel has assumed, with the assistance and support of the secretariat and the consultancies retained by the secretariat, an investigative role that goes beyond using the adversarial method of verifying claims.

90. The Panel will now proceed to describe the subject matter of the WBC Claim, the determinations it has made as regards the compensability of the costs included therein, and the results of the procedures it has employed to verify those costs, in line with the above understanding of its role.

V. SUBSTANTIVE ANALYSIS

A. The subject matter of the Claim

91. The WBC Claim as originally submitted by the Claimant is for the amount of US$951,630,871. See supra paragraph 1. As described in paragraph 26, supra, the Claimant subsequently amended the Claim, which resulted in a reduction of the amount claimed by KD 265,278. Applying the exchange rate US$3.45 = 1 KD used by the Claimant to convert costs originally incurred in Kuwaiti dinars into United States dollars, see infra paragraph 114, the reduction made by the Claimant, KD 265,278, translates

to US$915,209.19/ Accordingly, the WBC Claim as amended amounts to US$950,715,662.

92. The amended WBC Claim can be analyzed as follows:20/

KOC costs	Amount (US$)
International firefighting and support services contractors	206,879,412
Post capping	25,654,763
Sundries	10,068,708
Total	242,602,883

KOC - Al-Awda costs	Amount (US$)
Direct costs	
Firefighter support	52,392,745
Construction equipment	293,462,100
Ancillary costs	
Project management and related services	145,839,509
Support facilities	120,958,852
Freight	65,791,081
Communications	26,422,306
Jebel Ali staging area	3,246,186
Total	708,112,779

93. The Accountants' Report defines KOC costs as "costs incurred by KOC and recorded on the accounting system maintained by KOC Financial Services Department." KOC - Al-Awda costs are defined as "costs associated with the Al-Awda project that were recorded by Bechtel as project managers, on the KOC - Al-Awda system. These are all paid by KOC but the difference between these and other KOC costs is that these are recorded within the Al-Awda project and details transferred to the KOC ledgers."

94. Appendix 3 to the Accountants' Report contains details of the KOC - Al-Awda costs, and appendices 4 through 8 contain analyses of the KOC costs. Annex 10 to the Claimant's submission of 1 July 1996 comprises copies of the relevant invoices and proof of payment documents listed in appendix 4 to the Accountants' Report containing an analysis of international firefighting and support contractors costs, which is the main

item under the heading "KOC costs." Annex 11 to the same submission is a listing of invoices underlying the KOC - Al-Awda costs.

95. The Claimant states that, generally, the WBC Claim includes all costs "incurred in connection with the preparation for, and the execution of, the WBC Exercise provided that they were paid by 31 July 1992, except in the case of post-capping costs, which have been included, irrespective of the time of payment, provided that they were recorded by KOC's accounting department by 30 September 1992."

96. More specifically, the Accountants state that "[i]n respect of KOC costs (which after 31 July 1992 relate only to post capping) [they] [had] included all the costs recorded up to 30 September 1992." In a subsequent submission, the Claimant described the inclusion parameters for the KOC costs as follows:

> "The KOC costs were relatively straightforward for the purpose of the claim. The relevant costs were incurred under a number of specific contracts made by, or for the benefit of, KOC specifically for the WBC exercise. Although the sums involved were significant, the limited number of payees of these costs meant that the records were straightforward. . . . [A]ll the costs incurred to these contractors in respect of their work falling within the WBC exercise had been paid and recorded by 30 September 1992. This was 10 months after the date on which the last oil well was brought under control. However, examination of the records revealed that all the expenses to these contractors had been paid and recorded by the end of July 1992, save for certain costs incurred in respect of 'post-capping,' the final part of the WBC exercise.

97. The inclusion parameters for the KOC - Al-Awda costs are more intricate. According to the Claimant, "[these costs] were contained within a much larger financial system built up by Bechtel in managing the major projects comprised within, first, Al-Awda, and, then, Al-Tameer." The Claimant states that

> ". . . [t]he financial system run by Bechtel under their project management contract with KOC was necessarily more elaborate, and became more so as the initial Al-Awda phase of the recovery project became Al-Tameer at the end of 1991. The various parts of the project were separately coded (Level 1); and the relevant components of each part were given a supplementary code (Level 2). In addition, each type of expense had a separate coding system (Level 3), many of which transcended the level 1/2 code allocation. The financial system maintained full records of cost control, and was termed throughout by the acronym: COCO (costs and commitments)."

98. The Claimant explains that "[t]here were 20 main cost codings, lettered between B and Z." According to the Claimant, "[l]arge parts of COCO related to costs other than for the WBC Exercise, indeed in some cases for companies other than KOC." The Claimant stresses that at the time when

the Accountants commenced their work in the spring of 1992, this financial system was "live," i.e., "Bechtel was recording financial data continuously as the Al-Tameer phase of the project was then in full operation." In these circumstances, according to the Claimant,

> ". . . it was impossible for [the Accountants]--even if it had been feasible--to have de-constructed the COCO records so as to identify every last payment incurred specifically and exclusively for WBC purposes. Instead, they used the structure of these existing records, identifying those costs codes which were mainly or exclusively intended to record WBC costs, but excluding other parts of the records which might also have included WBC costs which it would have been impractical to separate out."

(Emphasis in original.)

99. Accordingly, it was decided that seven of the 20 distinct Level 1 COCO codes "dealt largely or exclusively with costs incurred in fire fighting and well blowout control." As presented by the Claimant, these codes are the following:21/

W	Firefighter support
E	Construction equipment
B	Project management and related services
S	Support facilities
Z	Freight
C	Communications
J	Jebel Ali staging area

100. As shown in paragraph 92, supra, the accountants classified "Firefighter support" (cost code W) and "Construction equipment" (cost code E) as "direct costs," and costs incurred under the other headings as "ancillary costs."

101. The Claimant explains that with regard to the ancillary costs (or common or indirect costs, as they are also referred to by the Claimant), "it was impossible to know precisely what costs were attributable to the WBC exercise, as distinct from reinstatement of KOC's operating facilities." Consequently, instead of attempting to allocate the common costs between the WBC Claim and other claims, the Claimant included in the WBC Claim the KOC - Al-Awda costs that were committed to before 30 November 1991 and that were paid for by 31 July 1992.

102. According to the Claimant, two exceptions were made to the above parameters. Accruals were included in the WBC Claim relating, on the one hand, to four replacement pumps that had been ordered but the payment for which had not yet been completed, and, on the other, to costs billed by Shuaiba Area Authority for seawater used to extinguish the fires. The accruals are in the amounts of US$1,500,000 and US$1,770,584, respectively.

103. The Claimant states that a decision was made not to allocate the common costs "since [ ] any allocation would [have] be[en] subjective and arbitrary; and [ ] the urgent priority and overwhelming focus of activity throughout the period from liberation to November 1991 was to extinguish the fires; all costs in these categories [were] [ ] included in the WBC Claim, so long as they had been incurred and paid in the relevant periods."

104. The Accountants' Report explains the above decision by stating that, although it would have been possible to apportion indirect costs between the WBC Exercise and other concurrent activities, this was not considered to be of any value because

> "(a) all such concurrent activities themselves are the result of the illegal Iraqi invasion and occupation, so if not included in this claim would in any event be included in the claims to be made in respect of reinstatement;
>
> "(b) any such apportionment would be subjective; and
>
> "(c) there is no practical way that such apportionment can be made in respect of the cost of capital equipment."

105. The Accountants further explain that,

> ". . . [w]hilst it might be possible to estimate the emphasis of the work by reference to the direct labour costs associated with each project, the fact that costs incurred in other projects are also claimable means that to the extent that they do not relate to WBC is unimportant as the effect ultimately is only under which head a valid claim can be made and not if it can be made. The WBC effort was the principal task on the return to Kuwait. Accordingly it seems appropriate to consider all of the support in the period of the WBC work as part of the WBC claim. This methodology removes the need to create an arbitrary allocation of these costs between this and other heads of claim.
>
> ". . .
>
> "[The cut-off date of 30 November 1991] is, by its nature, an estimate, as it is quite possible that some of the WBC costs will not have been recorded as commitments prior to 30 November 1991. It is thought to be a reasonable date as the last fire was extinguished on 6 November 1991 and there was an inevitable time lag in processing the paperwork which would mean that costs relating to 6 November 1991 will have taken some time to be input into the system. The impact of any error in this cut-off is likely to be one of claiming costs in a

different part of the claim and not of either over- or under-claiming."

(Emphasis in original.)

106. The Claimant states that the costs associated with the WBC Exercise that (a) had not been paid by 31 July 1992; or (b) are not exclusive to the WBC Exercise and were committed subsequent to 30 November 1991; or (c) relate to post-capping and were not recorded by 30 September 1992, will be included in a different claim. According to the Claimant, "[e]xcept in relation to post-capping it is not anticipated that such costs will be substantial."22/

107. The costs incurred in the WBC Exercise include revenue expenditure as well as capital expenditure on the acquisition of equipment and facilities needed to perform the exercise. The total amended amount sought by the Claimant, US$950,715,662, breaks down between revenue and capital expenditure as follows:23/

Type of expenditure	KOC (US$000)	KOC - Al-Awda (US$000)	Total (US$000)
Revenue	216,612	430,197	646,809
Capital	25,991	277,916	303,907
Total	242,603	708,113	950,716

108. The Accountants' Report states that "[t]he figures included in this claim in respect of capital expenditure represent the full cost of capital items purchased in the periods covered by this claim." Accordingly, no allowance was made to reflect any residual value of the capital items after the completion of the WBC Exercise. The Accountants explain that

> ". . . [t]his is because most of the equipment continued to be used in the Al-Tameer, reconstruction project. As the Al-Tameer project also relates primarily to activities for which separate claims are being made, any credit given for residual value at this stage would give rise to an addition to the other claims. Further KOC are presently assessing the extent of surplus equipment following the WBC Exercise and the completion of the majority of the Al-Tameer project. This exercise will enable a more realistic evaluation of the residual value, after the equipment has ceased to be used on claimable activities, to be made.
>
> ". . .
>
> "Any residual value of capital items after the full reinstatement of the facilities of KOC is completed, or expected to be completed, will be included as a deduction to later claims for the reinstatement of assets when the residual value can better be estimated."

109. The Accountants state that they spent approximately three months at KOC's Financial Services Department and Bechtel's Accounting Department in preparing their Report. They declare that "[they] [have] examined the accounting systems and records maintained by KOC and Bechtel, to satisfy [themselves] that the costs claimed have been incurred as described." The verification work performed by the Accountants comprised both systems tests and substantive tests.24/ They did not verify each cost individually as this "could only be done at prohibitive expense."

110. The Accountants' Report explains that the verification work consisted of "simple arithmetic checks; detailed discussions with management of both KOC and Bechtel regarding systems and controls; substantive testing of individual costs claimed; and further detailed investigation of aspects of the system or of individual cost areas which, in [their] opinion, merited this further work." In total the amounts verified by the Accountants on the basis of the supporting documentation are as follows:25/

Source	Value claimed (US$000)	Value tested (US$000)	Percentage
KOC	243,518	111,927	46%
KOC - Al-Awda	708,113	400,983	57%

111. According to the Accountants' Report, "[t]he overall level of testing adopted is that which in [their] professional opinion is appropriate in assessing a claim of this nature and magnitude and is significantly greater than that which would normally be adopted in auditing the figures for statutory financial statement purposes."

112. The Accountants made a number of adjustments to the figures in the accounting records "to reflect only those costs that can be reasonably claimed." According to the Accountants, as a result of these adjustments, Bechtel project management costs were included in the Claim only to the extent that they relate to services rendered up to the end of November 1991. Similar adjustments were made with regard to costs recorded under the other headings to remove ongoing costs, costs relating to refurbishment of existing assets, erroneous postings and invalid costs, and to correct errors in the applicable exchange rates. As a result of these adjustments, the claimable costs were reduced by US$154,823,021.

113. The Accountants' Report concludes as follows:

> "As independent accountants we have examined the costs of the WBC Exercise in the total sum of $951,631,000 and have carried out such tests on the costs and on the systems used for recording these costs as we consider necessary.
>
> "We are satisfied that:
>
> "• the costs claimed have been incurred and are properly claimable as a direct result of the illegal Iraqi invasion and occupation;
>
> "• the systems used have properly recorded the costs incurred and that they have been competently operated."

114. The costs included in the WBC Claim were incurred mainly in three currencies: United States dollars, Sterling and United Arab Emirates dirhams. Costs incurred by Bechtel in a currency other than United States dollars were converted by Bechtel to the latter currency using the month-end rate for the preceding month taken from the Financial Times (London). The costs recorded by KOC in Kuwaiti dinars were converted for the purposes of this Claim at the rate of US$3.45 = 1 KD.

B. Compensability of the Claim

115. The Panel has employed a number of procedures to assess the compensability of the WBC Claim and to verify the costs claimed. As explained in the section "Proceedings," supra, three rounds of interrogatories were addressed to the Claimant; Iraq's response to the Statement of Claim was requested and considered; an on-site inspection was performed in Kuwait by a verification team to review the accounts, invoices and other documentation underlying the WBC Claim; and oral proceedings were held to clarify outstanding issues and to allow oral questioning of the Claimant's experts. In the course of the on-site inspection invoices worth approximately US$180 million were reviewed. The voluminous documentation submitted by the Claimant on 1 July 1996 as well as the working papers of the Accountants, which were made available to the UNCC at the request of the verification team, were reviewed by the secretariat and its accounting consultant and the results were reported to the Panel. See supra paragraphs 15-17.

116. The Panel is satisfied, based on the evidence before it and the results of the verification procedures employed, that the costs forming the subject matter of the WBC Claim have in fact been incurred by the Claimant. This finding is without prejudice to the issue of whether all the costs included in the WBC Claim were incurred in the execution of the WBC Exercise and, consequently, can properly be verified in the context of this

Claim, as well as the issue of whether all of the individual cost items are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait. The Panel will address these two issues when considering the different types of expenditure included in the WBC Claim and the specific cost headings under which the Claim is analyzed.

117. The Panel also notes that, as explained in paragraph 34, supra, and further elaborated upon by the Claimant and its witnesses at the oral proceedings, appropriate procedures, such as competitive tendering, the requirement of KOC approval for purchases made through Bechtel, and accounting and cost control systems were employed by the Claimant to control the costs and to keep them at a reasonable level in the extraordinary circumstances prevailing in Kuwait in the aftermath of the Gulf War.

118. In view of the above, the Panel determines that reasonable measures have been taken to ensure that the costs have not exceeded what could be expected in the circumstances. Like the Panel's determination in paragraph 116, supra, this finding is without prejudice to the issue of whether all the costs claimed in the WBC Claim can properly be verified in these proceedings and whether all the individual cost items are compensable.

C. The scope of the Claim

1. Capital expenditure

119. As stated in paragraph 107, supra, the WBC Exercise entailed capital expenditure totaling US$303,906,625. This expenditure can be analyzed as follows:

	US$000	US$000
Incurred by KOC		25,991
Incurred by Bechtel		
Mobile assets	243,097	
Buildings, etc.	34,819	277,916
Total		303,907

120. Iraq argues that no capital expenditure should be included in the WBC Claim. It states as follows:

"It is common practice in the international accounting system to indicate those costs that must be amortized during the total time period of the assets working life. What must be paid is the depreciation installment for the actual period during which these assets have been used.

". . .

"The overwhelming majority of the equipment and other assets which were purchased were used for various purposes having no relation to the firefighting efforts, so there is no guarantee assuring that the cost of the above mentioned equipment and assets will not be included in other claims.

"All what has been stated clearly leads to artificial increase in the claimed amounts without any foundation. . . . Capital expenditure must be excluded and presented in an independent claim . . . ."

121. The Panel finds that, given the magnitude and complexity of the task, the WBC Exercise could not have been performed without the purchase of equipment, buildings and other facilities that were necessary for its successful completion. Therefore, a certain amount of capital expenditure is appropriately included in the WBC Claim. However, this does not necessarily mean that all of the capital expenditure can properly be verified and, consequently, is fully compensable in the context of this Claim.

122. As described in paragraph 108, supra, although most of the equipment, buildings and other facilities purchased during the period covered by the WBC Claim continued to be used in the Al-Tameer project, no allowance was made by the Claimant in the WBC Claim to reflect any residual value of such equipment as at the end of the WBC Exercise. The Claimant states that no residual value calculation was undertaken by the Accountants for the reasons explained in paragraph 108, supra. Moreover, according to the Claimant, "[a]s accountants, Touche Ross were not qualified to undertake such an exercise." The Claimant adds that, in any event, "[e]stimates of value that might have been made at that stage would have been subjective and unreliable given the difficulty of ascertaining the use of the assets in question." In the Statement of Claim the Claimant stated that the residual value would be addressed, and appropriate allowance made, in later claims. Subsequently, on 15 November 1994, Kuwait informed the Commission that "[the] residual value has now been calculated, and credit for it will be included in [the Claimant's] 'Physical Assets and related damage Claim,' which will shortly be submitted to the Commission on behalf of Kuwait." The latter claim was filed with the UNCC on 27 June 1994. See supra paragraph 26.

123. The Panel addressed the residual value issue in its interrogatories, asking the Claimant to clarify whether in the present proceedings it would

be able to perform the residual value calculation as at the end of the WBC Exercise. The Claimant replied as follows:

> "KOC is not presently in a position to provide the Panel with the information requested. [ ] The assets in question were acquired necessarily in response to the destruction of Kuwait's infrastructure for which Iraq is responsible. Those assets which had a value at the end of the WBC exercise remained in use for the purpose of the reinstatement exercise. Only to the extent that there was any residual value available for KOC's continuing operation of the oil fields was it necessary to give credit against the costs incurred. Any value struck in November 1991 would have been the starting point for computing additional costs incurred in the Physical Assets Claim. Thus, there is no difference in the overall compensation claimed.
>
> ". . .
>
> "KOC's expert consultants for the Physical Assets and Related Damage Claim have adopted a reasonable approach to estimate the residual value of these assets at a more realistic stage of KOC's reinstatement of its property and operations, following liberation from Iraq.
>
> ". . .
>
> "Because KOC is the Claimant in respect of both WBC and the Physical Assets Claim, there is no possibility of double compensation. Credit has been given for the residual value of the assets in the context of the Physical Assets Claim in which no costs were claimed for the acquisition of those assets."

124. It is not disputed by KOC that most of the capital assets purchased during or close to the end of the period covered by the WBC Claim were subsequently used in other activities, and that some items were not used at all in the WBC Exercise. Examples of such assets include buildings, installations and other capitalized assets, such as "general facilities," "field offices," "workshops," "new warehousing," "camps," "heavy plant vehicles," etc. The Claimant suggests that it is reasonable to include in the WBC Claim in full the capital expenditure incurred in purchasing such assets because those assets were in any event used in "compensable activities," i.e., in reinstatement of KOC's assets damaged or destroyed as a result of Iraq's invasion and occupation of Kuwait.

125. The Panel considers that at this stage it is not practicable and perhaps not even possible to assess the residual value of each individual capital asset, or category of assets, purchased during the period covered by the WBC Claim as at the end of that period; in any event, the information that would enable the Panel to perform such calculation is not before it. Notwithstanding this finding, the Panel is unable to recommend in the present Claim the compensation in full of capital expenditure incurred in purchasing such assets. While the WBC Claim file contains information that enables the Panel to verify the purpose for which the

capital assets in question were used during the period covered by the Claim, the Panel is not in a position to verify for which purpose these assets were used after that period. The documentation that would enable the Panel to perform such verification is presented in KOC's Physical Assets Claim and thus is not before this Panel, which was appointed to review the WBC Claim only.

126. Given that the residual value of capital assets purchased during the period covered by the WBC Claim cannot be calculated in the present Claim, that the use of only a portion of the capital expenditure at issue can be verified herein, and that the use of the remaining portion can only be verified in KOC's Physical Assets Claim, the Panel determines that a portion of the capital expenditure included in the present Claim must be allocated to the Physical Assets Claim. Having considered various options, the Panel finds it appropriate to perform this allocation on the basis of the length of the period during which the capital assets in question were used. This period must now be determined.

127. According to the Claimant, KOC's restoration program may be divided into the following three phases:

a. Al-Awda, which began with liberation and effectively ended with the capping of the last burning well on 6 November 1991;

b. Al-Tameer, which in practice began on completion of Al-Awda and continued until 30 June 1993;26/ and

c. Phase III, an unofficial designation for the period which began in July 1993 and will continue until completion of KOC's restoration work.

128. As explained in paragraphs 31-32, supra, the WBC Exercise formed part of the Al-Awda project. Therefore, the time frame that is relevant here consists of the period covered by the WBC Exercise, which extended from the beginning of March 199127/ until the beginning of November 1991, and of the period following the WBC Exercise until the completion of the reconstruction effort. The Panel finds that 31 March 1994, which appears to be the date used by KOC in the Physical Assets Claim to calculate the actual costs incurred in the reinstatement effort, as opposed to future estimated costs, should be considered for the present purposes as the date of completion of the reconstruction effort. Consequently, the Panel determines that the period following the WBC Exercise during which the assets in question were used extended from the beginning of November 1991 until the end of March 1994.

129. The entire period defined above thus extends from the beginning of March 1991 until the end of March 1994, totaling 37 months, of which the WBC Exercise covers eight months and the subsequent reconstruction period covers 29 months. Accordingly, of the entire period during which the capital assets in question were used approximately 22 percent can be apportioned to the WBC Exercise, and approximately 78 percent can be apportioned to the reconstruction effort.

130. In view of the above, the Panel determines that 22 percent, or US$66,859,457, of the total value of the capital assets (US$303,906,625) purchased during the period covered by the WBC Claim can be verified in the present Claim. The remaining portion, US$237,047,168, must be verified in KOC's Physical Assets Claim. Therefore, the Claimant may amend its Physical Assets Claim to the effect that the capital expenditure in the remaining amount of US$237,047,168 be made part of that claim.

131. The above allocation is without prejudice to the determination by the Panel that will review KOC's Physical Assets Claim of the residual value of the assets in question as at the end of the reconstruction effort.

132. The Panel will explain the distribution of capital expenditure as per the different cost headings in connection with its discussion of the costs claimed under each such heading. For reasons explained in paragraphs 167-69, infra, it is not possible for the Panel to provide a precise distribution of capital expenditure as per each individual cost heading; however, because the global figure of capital expenditure is available to the Panel, this does not affect the quantification of compensable capital expenditure.

133. To the extent that the amount of capital expenditure under a particular cost heading needs to be known in order for the Panel to be able to quantify the amount of compensable revenue expenditure, the Panel will make its best estimate of the amount of capital expenditure under each such heading, based on the record before it, which includes the Accountants' Report and the Appendices thereto, and the Accountants' working papers.

2. Direct and common costs

134. The Claimant has divided the KOC - Al-Awda costs into "direct" and "common" (or "ancillary") costs as follows:28/

Direct costs	US$
Firefighter support	52,392,745
Construction equipment	293,462,100
Sub-total	345,854,845
Common costs	
Project management and related services	145,839,509
Support facilities	120,958,852
Freight	65,791,081
Communications	26,422,306
Jebel Ali staging area	3,246,186
Sub-total	362,257,934
Total	708,112,779

135. Subject to the Panel's determination regarding the allocation of capital expenditure, supra paragraph 130, the Panel agrees that, in view of their nature, the costs recorded under the headings "Firefighter support" and "Construction equipment" are properly classified as "direct" costs, or costs that are attributable almost exclusively to the firefighting effort. These costs are described in more detail in paragraphs 178-81, infra, in connection with their quantification.

136. As regards the common costs, the Claimant states that, although such costs relate not only to the WBC Exercise but also to other projects that were undertaken concurrently by the Claimant, they were included in full in the WBC Claim. As described in paragraphs 101-05, supra, the Claimant argues that this decision is justified because the costs are in any event compensable and any allocation between the various projects would be "subjective and arbitrary." The Claimant further suggests that an allocation of the common costs is unnecessary on grounds that "the urgent priority and overwhelming focus of activity throughout the period from liberation to November 1991 was to extinguish the fires." Supra paragraph 103.

137. In view of its mandate, which is limited to the review of the WBC Claim, the Panel finds that it is not in a position to determine whether the costs incurred in the projects undertaken by the Claimant concurrently with the WBC Exercise are compensable and, if so, to what extent. The documentation that would enable the Panel to make such a determination is to be found in the other claims submitted by KOC, which are not before this Panel. In these circumstances, the Panel determines that only the portion of the common KOC - Al-Awda costs claimed in the WBC Claim that relates to

the WBC Exercise can properly be verified in the present Claim; the other portion must be verified in other KOC claims.

138. The Panel considers that it may not be possible to know with precision which common costs are attributable to the WBC Exercise, on the one hand, and the other concurrent activities, on the other. In the Panel's view, this difficulty does not preclude making a global allocation of common costs between the WBC Exercise and the other concurrent activities.

139. In this connection, the Panel refers to a document entitled "Al-Tameer Project Damage Assessment," prepared by Bechtel management in response to a request by the Accountants. This document was made available to the UNCC verification team and is also included in the Accountants' working papers. According to this document, based on the manual labor man-hour charges, a ratio of 80/20 would be appropriate to allocate the common KOC - Al-Awda costs between the WBC Exercise and all the other concurrent activities. Applying this ratio, the Panel determines that 80 percent of the common KOC - Al-Awda costs can be verified in the WBC Claim. It follows that the remaining 20 percent must be verified in KOC's other claims.

140. The Panel notes that the above ratio is to be applied in such a way as to avoid any double allocation of the costs claimed in the present Claim. Thus, the common costs as per the relevant cost headings are to be allocated on the basis of the revenue expenditure claimed under each such heading after excluding capital expenditure, for which a different allocation methodology is to be used, as determined above.

141. While the Claimant has not applied the distinction between direct and common costs to costs claimed under the heading "KOC costs," it appears to the Panel that there are certain costs items under the sub-heading "Sundries" that can also be considered as "common" in the sense that they are costs incurred in supporting the Al-Awda project as a whole. The Panel determines that the cost items "Legal costs" and "Consulting costs" are to be considered as common costs and allocated accordingly. The Panel will quantify the amount to be allocated when considering these cost headings.

VI. QUANTIFICATION OF THE CLAIM

A. KOC costs

1. Analysis

142. KOC costs refer to costs incurred by KOC and recorded on the accounting system maintained by KOC Financial Services Department. See supra paragraph 93. These costs, as amended, are analyzed under the following headings:

International firefighting and support services contractors	US$206,879,412
Post capping	25,654,763
Sundries	10,068,708
Total	US$242,602,883

143. The total amount claimed under this heading, US$242,602,883, includes revenue expenditure in the amount of US$216,611,828 and capital expenditure in the amount of US$25,991,055. According to the Claimant, all of the capital expenditure relates to costs recorded under the headings "Purchased equipment" and "Other costs," which are sub-headings of "International firefighting and support services contractors." See infra paragraphs 145-47.

144. Applying the Panel's determination regarding the allocation of capital expenditure, see supra paragraph 130, 22 percent of such expenditure claimed under the heading "KOC costs," amounting to US$5,718,032, can be verified in the present Claim. The remaining 78 percent, amounting to US$20,273,023, must be verified in KOC's Physical Assets Claim.

2. International firefighting and support services contractors

145. Under the heading "International firefighting and support services contractors" the Claimant seeks US$206,879,412.29/ This amount is further analyzed in the Accountants' Report and in the Appendices to the Accountants' Report, which show that the amount mainly consists of charges for services, rented and purchased equipment and "other" costs, amounting to US$175,518,000.

146. The Accountants state that "[t]he charges for services relate to the direct costs of the firefighting personnel being mainly time charges and expenses incurred." The costs incurred in rental and purchase of equipment are explained as follows:

> "The rental and purchase of equipment relates to equipment brought in by the firefighters in order to perform their work. This purchased equipment . . . is included on the Bechtel management department's register of assets. This total being the $36,014,000 [purchased equipment for firefighters] and the $570,000 included in paragraph 4.2 [purchased equipment for support services contractors] (together $36,584,000) is significantly greater than the capital figure of $25,991,000 . . . because it includes loose tools and consumable equipment used to control the flow of oil from the wellheads which have not been capitalised by the AMD."

147. "Other" costs are further explained by the Accountants as follows:

> "The other costs are the costs of contractors not allocated between the cost headings identified above. They are in respect of charges for services but do contain other equipment related costs not separately analysed on the face of the contractors invoice. As such the costs do not relate to costs of a different nature to the analysed costs, it is just that they are not analysed by the contractor in the submission of their invoice."

148. Iraq argues that the firefighting and support services contractors managed to include a premium element in their rates due to the unusual circumstances in which the contracts were negotiated. Based on alleged anomalies in the number of wells extinguished as per the various firefighting teams, the average rates charged by the companies, as well as the adjustments made by the Accountants, Iraq asserts that the data provided by the Claimant is not reliable and sufficient to make a proper evaluation of these costs.

149. The Panel notes that, as a result of the interrogatories by the Panel, further documentation submitted by the Claimant and the on-site inspection performed by the verification team in Kuwait, additional information has been provided to the Panel that has enabled it to verify the costs in question. The Panel also accepts that in the circumstances prevailing in Kuwait in the aftermath of the Gulf War it may have been necessary for the Claimant to pay a higher price than what would have been otherwise payable for the services in question. The Panel considers that the Claimant has taken reasonable steps to control any excessive pricing of these services. See supra paragraph 118.

150. In view of the above, and based on the evidence in the record and the results of the verification procedures employed, the Panel is satisfied that the costs claimed under the heading "International firefighting and

support services contractors" are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait. This finding is subject to the Panel's determinations regarding the allocation of capital expenditure, supra paragraph 130, and the compensability of costs incurred in connection with the work performed by KOC's own firefighting team, infra paragraphs 161-63.

3. Post-capping costs

151. Under the heading "Post-capping" the Claimant seeks the amount of US$25,654,763. According to the Accountants' Report, this expenditure "represents the total of costs input to the KOC ledger to 30 September 1992." The Accountants further explain that "[t]hese costs are controlled by the KOC drilling department and cover costs on post capping incurred in respect of work performed by the International firefighters, Santa Fe drilling and others as well as KOC personnel. In addition, it includes the cost of post capping materials such as well heads."

152. Noting that the inclusion of post-capping costs in the WBC Claim was specifically discussed between KOC and the Accountants, Iraq asserts that not even the Accountants were "wholly convinced with the inclusion of post-capping costs in the WBC Claim." Iraq argues that certain factors, such as the fact that post-capping costs were handled within KOC by its drilling department, show that these costs were "not an essential part of the firefighting operations, but were part of the process for preparing the oil wells for production." In this connection, Iraq refers to the Accountants' Report, which describes the processing of post-capping costs within the KOC - Al-Awda system as follows:

> "In respect of post-capping costs, which are the responsibility of the Drilling department, all invoices received from contractors are sent to the Drilling department who perform the above checks as well as controlling the work performed by post-capping contractors. They are also responsible for analysing post capping costs separately from other drilling costs. They then pass the invoices on to the next stage in the controlling and recording process."

153. In view of the nature of post-capping costs as well as the fact that the bulk of these costs is included in KOC's Physical Assets Claim, the Panel in its interrogatories also raised the question of their proper allocation to the WBC Claim. Asked to justify the inclusion of the post-capping costs in the WBC Claim from both the legal and the accounting point of view, the Claimant stated as follows:

> "Provided that the losses meet the criteria for compensation defined by UNSCR 687 and the decisions of the Governing Council, and provided

there is no duplication, there is no legal distinction between the costs included in one Oil Sector claim or another. KOC has defined the WBC Claim to include all those costs which it incurred, directly or indirectly, in putting out the oil fires and bringing the flow of hydrocarbon fluids from the wells under control.

". . .

"Post-capping is a continuation of the process of making the wellhead safe . . . . The well blowout control exercise involved gaining access to fires, extinguishing them, stemming the flow of oil and gas by capping and then post capping was necessary to make the wells permanently safe and under control.

"Logically, therefore, post capping costs may be included as part of this claim because they were a necessary conclusion to the WBC exercise. Legally they are justified, regardless of their categorization, because they are plainly costs incurred as a direct result of Iraq's detonation of Kuwait's oil wells.

"The post capping exercise was not complete at the time of preparing the WBC Claim, and that is the prime reason why a portion of the costs was deferred to the Physical Assets Claim (although it is justifiable to include such costs within that claim also, because post capping work was also a prelude to reinstating KOC's physical assets in the oil fields).

". . .

"From an accounting point of view, the inclusion of these costs is a mere matter of definition: the costs were included as part of the well blowout control process. As the post capping work was incomplete at the time of preparing the claim, and rather than estimating the total post capping costs at that time yet to be incurred and including an estimate as part of the claim, it was acknowledged that a more exact figure (and therefore more appropriate level of compensation) would be achieved by including the balance of the post capping costs in a later claim. The most logical claim in which to include the balance was the Physical Assets and Related Damage Claim."

154. The issue was further addressed at the oral proceedings. There, the Claimant's accounting experts who had participated in the preparation of the relevant claims for submission to the Commission described the procedures they had used to avoid duplication of post-capping costs between the WBC Claim and the Physical Assets Claim. In that connection, the Claimant also further clarified the nature of these costs and restated its justification for their inclusion in the Claim.

155. Based on the evidence before it and the results of the verification procedures employed, the Panel is satisfied that the post-capping costs included in the WBC Claim are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait. While it is debatable, as acknowledged by the Claimant, whether post-capping technically constitutes part of the WBC Exercise or part of the reconstruction effort, the Panel finds that

awarding a portion of the post-capping costs in the present Claim will not create a risk of double compensation. With the assistance of the secretariat and relying on the documentation submitted in the two claims, the Panel that will review KOC's Physical Assets Claim will be in a position to ensure that the costs which have been verified and awarded in the present Claim do not overlap with those to be verified in the Physical Assets Claim.

4. Sundries

156. The Claimant seeks US$10,068,708 as compensation for costs recorded under the heading "Sundries." The Accountants state that "[t]his cost heading includes various costs which have been identified by KOC as related to WBC, but which do not fall under a separate heading."

157. The sub-headings that comprise this category are "KPC costs," "Legal costs," "Consulting costs," and "Other KOC- [Extraordinary Revenue] costs" ("Other KOC-EOR costs"). "KPC costs" are those incurred by KPC and passed on to KOC by inter-company accounting entries. These costs consist of project payments for support services, project payments for suppliers, and insurance payments. "Legal costs" cover costs incurred by KOC in the arrangement and control of WBC contracts. "Consulting costs" are those associated with the work performed by Arthur Andersen, the accounting consultant hired by KOC to operate the KOC accounting system after the liberation, whereas "KOC-EOR costs" consist of "revenue costs which have not been otherwise classified." All of these costs are further analyzed in the Appendices to the Accountants' Report.

158. Iraq states that the cost of legal and technical consultation "is not part of the firefighting operation and is an unclaimable amount." Iraq also objects to the costs relating to the work performed by Arthur Andersen.

159. The Panel has earlier determined that the KOC costs claimed under the headings "Legal costs" and "Consulting costs" are to be considered as costs common to the various activities undertaken by the Claimant contemporaneously with the WBC Exercise. See supra paragraph 141. The legal costs amount to US$3,022,513 and the consulting costs amount to US$895,443. According to the standard adopted by the Panel in paragraph 139, supra, 80 percent of these costs, amounting to US$2,418,010 and US$716,354, respectively, can be verified in the present Claim and the remaining 20 percent, amounting to US$604,503 and US$179,089, respectively, must be verified in KOC's other claims. The Claimant may amend its other

claims, identifying such claims and the amount to be allocated to each such claim, to include the above amounts, which cannot be verified in the present Claim.

160. Subject to the above allocation and the Panel's determination regarding the compensability of costs incurred in connection with the work performed by KOC's firefighting team, the Panel is satisfied, based on the evidence before it and the results of the verification procedures employed, that the costs claimed under the heading "Sundries" are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

5. KOC's firefighting team

161. The Claimant seeks US$2,804,390 as compensation for payments made to KOC's own firefighting team.30/ These costs are in part claimed under the heading "International firefighting and support services contractors" (and sub-headings "Firefighting contractors/Other costs") and in part under the heading "Sundries" (and subheading "Other KOC-EOR costs"). The former costs amount to US$1,478,527, and the latter to US$1,325,863.

162. Considering that the firefighting personnel in question appear to have been regular staff members of KOC, the Panel is of the opinion that the Claimant would have had to make such salary payments even if there had been no invasion. Consequently, in the absence of any further details by the Claimant regarding the precise nature of the payments in question, the Panel is not prepared to regard these costs as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

163. The above finding is without prejudice to the method of quantification of the sales and production loss claim presented by Kuwait's public oil sector.31/

6. Conclusion on KOC costs

164. The Panel concludes that costs claimed under the heading "KOC costs" in the total amount of US$218,741,878 have been incurred in the execution of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait. This finding is without prejudice to the Panel's determination regarding the compensability of indirect costs incurred in fighting oil-well fires in the Wafra oil field. See infra paragraphs 218-21. The

Panel's determinations with regard to the KOC costs are summarized in the chart below. The amounts are in United States dollars.

Cost heading/ Analysis	Total amount claimed	Total capital expenditure	Capital allocation	Total revenue expenditure	Common cost allocation	Rejections	Amount compensable
International firefighting and support services contractors	206,879,412 [para. 142][32/]	25,991,055 [para. 143]	(20,273,023) [para. 144]	180,888,357	-	(1,478,527) [paras. 161-63]	185,127,862
Post capping	25,654,763 [para. 142]	-	-	25,654,763	-	-	25,654,763
Sundries	10,068,708 [para. 142]	-	-	10,068,708	(783,592) [para. 159]	(1,325,863) [paras. 161-63]	7,959,253
Total	242,602,883	25,991,055	(20,273,023)	216,611,828	(783,592)	(2,804,390)	218,741,878

B. KOC - Al-Awda costs

1. Analysis

165. KOC - Al-Awda costs are costs associated with the Al-Awda project that were recorded by Bechtel as project managers on the KOC - Al-Awda system. See supra paragraph 93. These costs are analyzed under the following headings:

KOC - Al-Awda costs	Amount (US$)
Direct costs	
Firefighter support	52,392,745
Construction equipment	293,462,100
Ancillary costs	
Project management and related services	145,839,509
Support facilities	120,958,852
Freight	65,791,081
Communications	26,422,306
Jebel Ali staging area	3,246,186
Total	708,112,779

166. The above headings are further analyzed in the Accountants' Report and in the Appendices to the Accountants' Report.

167. The total amount claimed under the heading "KOC - Al-Awda costs," US$708,112,779, includes revenue expenditure in the amount of US$430,197,209 and capital expenditure in the amount of US$277,915,570. See supra paragraph 107. Of the latter amount, US$243,096,570 consists of capital expenditure on mobile assets, and the remainder, US$34,819,000, of capital expenditure in respect of buildings.

168. It appears that the greater part of capital expenditure on mobile assets, amounting to US$183,515,589, is claimed as "Purchased equipment" under the heading "Construction equipment" and that further significant amounts are claimed, in addition to that heading, under the headings "Firefighter support," "Support facilities" and "Communications." See infra paragraphs 174, 193 and 205-06. The bulk of capital expenditure on buildings, US$34,448,000, is claimed under the heading "Support facilities;" the remaining portion, US$371,000, under the heading "Jebel Ali staging area."

169. The Claimant states that it is not able to provide a breakdown of capital expenditure on mobile assets as per the COCO cost codes. This is because capital expenditure "was incurred in many of the Al-Awda cost sections and the identification criteria for such costs in the COCO Report was not the same as in KOC's asset register. It would therefore be virtually impossible to analyse the costs and identify each element of capital expenditure by cost heading." Further, according to the Accountants, the Asset Management Department of KOC ("AMD") which compiled, updated and maintained registers of all assets associated with the Al-Awda and Al-Tameer projects,

> ". . . is separate from the cost control department and as such does not use the same cost definitions--its requirements being of a different nature from those of the cost control department. For this reason it is not possible to perform a direct reconciliation between capital expenditure per the AMD and capital expenditure per the cost control department."

170. As noted in paragaph 132, supra, the technical difficulty described above does not preclude the global allocation of capital expenditure. Accordingly, the Panel determines, following the criteria established in paragraph 130, supra, that 22 percent, or US$61,141,425 of the total amount of capital expenditure claimed under the heading "KOC - Al-Awda costs" (US$277,915,570) is to be verified in the present Claim. The remaining 78 percent, US$216,774,145, must be verified in KOC's Physical Assets Claim. As noted in paragraph 133, supra, to the extent necessary to quantify the compensable amount of revenue expenditure under the relevant cost headings,

the Panel will make its best estimate of the amount of capital expenditure under each such heading, on the basis of the record before it.

171. Bearing in mind the above parameters, the Panel now proceeds to assess the compensability of the costs claimed as per the costs headings referred to in paragraph 165, supra.

2. Firefighter support

172. Under the heading "Firefighter support" the Claimant seeks US$52,392,745. The costs claimed under this heading consist of three major cost elements: labor, materials and equipment. The Claimant explains that "[e]ssentially these costs represent the costs of providing the infrastructure within which the WBC exercise was performed," citing as examples the following:

a. The excavation, lining and filling of the lagoons;

b. The provision of vast quantities of water to the firefighting teams;

c. The laying of the pipelines to supply the water;

d. The construction of the special access ways into the wellhead areas; and

e. The loading and unloading of the aircraft and cargo vessels.

173. Citing alleged inconsistencies between the information provided in the documents submitted by the Claimant and other sources of information regarding the length of roads built and the number of water lagoons and sand pits, Iraq argues that the information available to the Panel is not sufficient to process the Claim. Iraq further states that "production rates for all kinds of equipment" would also be necessary.

174. It appears that a significant amount of capital expenditure is claimed under the present heading. According to the Panel's best estimate, such expenditure amounts to US$19,795,591.33/ Applying the standard set in paragraph 130, supra, the amount allocable to KOC's Physical Assets Claim thus is US$15,440,561. In view of its finding made earlier in paragraph 135, supra, to the effect that the costs claimed under this heading can be appropriately considered as "direct" costs, the Panel need not perform any further allocation of these costs.

175. Based on the evidence in the record and the results of the verification procedures employed, the Panel is satisfied that costs claimed under the heading "Firefighter support" in the amount of US$36,952,184 have been incurred in the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

3. Construction equipment

176. The Claimant seeks US$293,462,100 under the heading "Construction equipment." The bulk of these costs was incurred in purchasing and renting equipment; some were incurred in respect of spare parts, surveying, manual labor, small tools, etc. According to the Accountants' Report, ongoing items were removed prior to the submission of the Claim so that only items relating to the period ending 30 November 1991 were included in the Claim.

177. The Accountants state that all of the costs claimed under the sub-heading "Purchased equipment," totaling US$183,515,589, "are included in the inventory of mobile assets maintained by the Asset Management Department." With regard to the rental equipment, the Accountants explain that "[t]o avoid an excessive build up of equipment with limited or no use after the WBC and reinstatement exercises KOC hired a considerable amount of equipment for these exercises."

178. Iraq states that the information available in the Claimant's initial submission is not sufficient to assess how the equipment in question was used. "Technical specification, time schedules, equipment allocation, maps, calculations and technical drawings, all of this is not present in the claim." Iraq concludes that, in any event, the amount of equipment is "obviously exaggerated."

179. The Panel notes that, given that all of the costs recorded under the sub-heading "Purchased equipment" relate to assets included in the mobile assets inventory maintained by KOC's Asset Management Department, these costs constitute capital expenditure. As noted in paragraph 168, supra, it appears to the Panel that, in addition to the above, there is further capital expenditure on mobile assets claimed under the heading "Construction equipment." The Panel estimates that the total of capital expenditure claimed under this heading amounts to US$200,000,000.34/ Applying the standard set by the Panel in paragraph 130, supra, regarding the allocation of capital expenditure, the amount allocable to KOC's Physical Assets Claim thus is US$156,000,000.

180. Like the costs claimed under the heading "Firefighter support," the Panel has earlier found that the costs claimed under the heading "Construction equipment" can be appropriately considered as "direct" costs. See supra paragraph 135. Thus, the Panel need not perform any further allocation of these costs.

181. The Panel is satisfied, based on the evidence on the record and the results of the verification procedures employed, that the costs claimed under the heading "Construction equipment" in the amount of US$137,462,100 are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

4. Project management and related services

182. This category of costs, totaling US$145,839,509, consists of expenditure incurred by Bechtel in organizing and managing the Al-Awda project, which included, inter alia, the WBC Exercise.

183. The costs claimed under the present heading consist almost entirely of personnel related costs. These costs, which appear to include only revenue expenditure, are described by the Accountants as follows:

> "These costs are those such as salary, overtime, travel, sick pay, and accommodation that Bechtel has charged to KOC for the work it has undertaken in organizing the majority of the Al-Awda and Al-Tameer projects.
>
> "This cost heading includes the costs associated with the personnel required to operate the Jebel Ali staging area . . . as this was part of the Project Management function. The role of Bechtel was not just one of project management and these costs relate to all the roles played by Bechtel personnel and contract personnel supporting them. They include personnel costs incurred in relation to functions such as procurement, construction, project control, design engineering, security, special projects, safety and so on."

184. The scope of Bechtel's work is defined in the contract for project management and related services entered into between KPC and Bechtel on 12 March 1991, but effective 9 November 1990 (the "Contract"). According to article 1, the Contract "relates to the restoration of the oilfields from wellhead flange to off-shore crude oil export delivery points including without limitation the repair/refurbishment/construction of the same for the provision of sufficient oil to supply [KPC's] immediate domestic and export requirements and thereafter further production as required by [KPC] and such other services as are agreed between [KPC] and Bechtel."

185. Bechtel's services included project management, engineering, procurement, construction, start-up testing services, and operations. Start-up testing services are defined in the Contract as the "initial operation of the Permanent Facilities of the Project," and operations are described as those "starting with the initial study of layouts and locations of all facilities to determine logistics, support and services necessary to achieve restoration through to the provision of personnel and systems required to operate the early production facilities." As part of its operations services, Bechtel was further required to develop, together with KPC, "an overall plan for early production, identifying key and critical activities to permit the earliest recommissioning of individual systems and large facilities."

186. The Panel notes that the scope of Bechtel's work was wide, covering not only the management of the WBC effort and the reconstruction-related activities, but possibly also certain aspects of the oil sector's normal business operations. In view thereof, the Panel finds that, while it is in a position to verify the costs incurred by KOC with regard to the management of the WBC Exercise by Bechtel, it is not in a position to determine whether the part of the costs that is unrelated to the WBC Exercise is also fully compensable as reconstruction-related management costs, or whether a part of them relates to the oil sector's normal business operating costs, which may be non-compensable. Consequently, the Panel determines that only part of the costs claimed under the present heading can be verified in the present Claim; the remaining part is to be verified in the Physical Assets Claim and other KOC claims.35/

187. Applying the standard applicable to common costs, see supra paragraph 139, the Panel determines that 20 percent of the amount claimed under the heading "Project management and related services," in the amount of US$29,167,902, relates to KOC's Physical Assets Claim and other KOC claims and therefore are costs that cannot properly be verified in the context of the WBC Claim. The Claimant may amend these other claims to include the above amount.

188. As regards the amount remaining after the above allocation, US$116,671,607, the Panel is satisfied, based on the evidence before it, that these costs have been incurred by the Claimant in the execution of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

5. Support facilities

189. The Claimant seeks US$120,958,852 under the heading "Support facilities." The Accountants state that, as regards the physical facilities, "the costs incurred in respect of the reinstatement of facilities existing pre-invasion have been excluded."

190. The heading "Support facilities" covers a wide range of costs, including the following:

a. Support for all manual and non manual workers such as the provision of accommodation (both the building of temporary camps for thousands of manual workers and the refurbishment of apartments and houses which had been ravaged by the occupying troops). This area of cost incorporates the cost of an ocean liner that was anchored in the Shuaiba Port to supplement scarce accommodation facilities in Kuwait post liberation;

b. The provision of meals for the personnel employed;

c. Office construction, maintenance, and operation;

d. The provision and stocking of a 40 bed semi-permanent field hospital;

e. The refurbishment of offices so that the organisational back-up for the project could be based in Kuwait;

f. The refurbishment or construction, as appropriate, of light and heavy machine workshops and the stocking of these workshops, to service and repair the fleet of vehicles working on the project;

g. The provision of extensive warehousing facilities, carpentry yards, fabrication shops for fabrication of both major and minor items to be used in the WBC Exercise;

h. The construction or refurbishment, as appropriate, of filling stations and fire stations; and

i. Site improvements, including explosive ordnance disposal.

191. Iraq specifically objects to costs incurred in clearing unexploded ordnance, which are included under this heading. Asserting that "Iraqi

mines were concentrated along the Saudi border or Gulf coastline as a normal defensive measure and not between oilwells," Iraq concludes that "any quantity of unexploded ordnance strewn over the desert, including KOC territory is mainly due to the[ ] [allied] air raids, apart from other measures taken by the coalition, who were the attacking side, such as artillery, tank . . . etc. fire."

192. The Panel notes that KOC has filed a separate claim with the UNCC for the compensation of costs incurred in removing unexploded ordnance (the "Removal of Unexploded Ordnance Claim").36/ In these circumstances, any determination by the Panel regarding the compensability of such costs in the present Claim would prejudge the Removal of Unexploded Ordnance Claim, where that issue forms the subject matter of the claim and where, consequently, the relevant factual and legal issues are briefed more fully. In view thereof, the Panel determines that the costs incurred in removing unexploded ordnance claimed under the heading "Support facilities," in the amount of US$994,435, cannot properly be verified in the present Claim. The Claimant may amend its Removal of Unexploded Ordnance Claim to include that amount.

193. The Panel notes that the amount claimed under the heading "Support facilities" consists partly of capital expenditure in respect of buildings, in the amount of US$34,448,000; see supra paragraph 168. The Panel understands that further capital expenditure on mobile assets is also claimed under this heading. The Panel estimates that this expenditure amounts to US$12,000,000 and that the total of capital expenditure thus amounts to US$46,448,000.37/ Consequently, following the Panel's determination regarding the allocation of capital expenditure, see supra paragraph 130, 22 percent of this amount, US$10,218,560, can be verified in the present Claim; the remaining 78 percent, US$36,229,440, must be verified in the Physical Assets Claim.

194. Also, following the Panel's determination regarding the allocation of common costs, see supra paragraphs 135-40, all of the revenue expenditure, except for the ordnance clearance costs, claimed under the heading "Support facilities" totaling US$73,516,41738/ is to be considered as common costs, of which 20 percent is to be allocated to KOC's other claims as costs that cannot be verified in the present Claim. Consequently, the Panel determines that 80 percent of the revenue expenditure claimed under the heading "Support facilities," amounting to US$58,813,137, can be verified in the present Claim. The remaining 20 percent, in the amount of US$14,703,283, must be verified in KOC's other claims. The Claimant may

amend its other claims, identifying such claims and the amount to be allocated to each such claim, to include the latter amount.

195. Based on the evidence on the record and the results of the verification procedures employed, the Panel is satisfied that costs claimed under the heading "Support facilities," in the amount of US$69,031,694, were incurred by the Claimant in the performance of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

6. Freight

196. Under the heading "Freight" the Claimant seeks the amount of US$65,791,081, consisting of charges made in connection with shipping and handling of supplies and equipment purchased for use in the Al-Awda project. The costs claimed under this heading have not been apportioned to individual cost categories. Thus, according to the Accountants, "the heading for freight contains all freight costs insofar as it was practical to isolate them from other costs."

197. Iraq objects to the Claimant's presentation of freight costs, stating that there is "no clear breakdown for the[ ] amounts and no information [is] available concerning what kind of materials were being transported in order to verify the accuracy of its classification." Iraq suggests that the freight fares should not have been separated from the costs of the supplies and equipment shipped. According to Iraq, "[i]nternational accounting system indicates that any additional expenditure occurring when acquiring an asset must be part of the total cost, thus the additional expenditure must be included in the original assets cost in order to avoid duplication."

198. The Panel shares the view that the costs incurred in shipping and handling an asset are associated with those incurred in connection with its purchase, as is their compensability. Furthermore, it appears to the Panel that the costs claimed under the heading "Freight" are almost exclusively linked to equipment and other capital assets and therefore should be treated like capital expenditure. Therefore, to avoid double allocation, no further allocation is to be made from these costs, on the basis of their nature as "common" costs. See supra paragraph 140.

199. The Panel has determined earlier that 22 percent of capital expenditure, i.e., expenditure incurred in purchasing equipment and other capital assets, claimed in the WBC Claim can be verified in the present

claim, and 78 percent of such expenditure is to be verified in KOC's Physical Assets Claim. See supra paragraph 130. Accordingly, the Panel determines that 22 percent of the costs claimed under the heading "Freight," in the amount of US$14,474,038, relates to capital equipment used in the WBC Exercise, and 78 percent, in the amount of US$51,317,043, relates to the use of such equipment in activities that were undertaken subsequent to the WBC Exercise. Given that the information regarding the use of the assets in question in such subsequent activities is to be found in KOC's Physical Assets Claim, the Claimant may amend that claim to the effect that the latter amount, US$51,317,043, is made part thereof.

200. The Panel is satisfied, based on the evidence before it and the results of the verification procedures employed, that 22 percent of the freight costs, in the amount of US$14,474,038, are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

7. Communications

201. The Claimant seeks US$26,422,306 as compensation for costs recorded under the heading "Communications." A breakdown and further analysis of this amount is provided in the Accountants' Report and in the Appendices to the Accountants' Report.

202. According to the Claimant, the communications costs "include all those associated with the rebuilding of the communications systems, which had been destroyed during the Iraqi occupation." The Accountants describe the communications system that was set up as a result of the expenditure in question as follows:

> "The installations monitored and controlled by Bechtel in the communications area during the Al-Awda project included a temporary PABX system, a limited trunk radio system, and a satellite communication link capable of reaching countries throughout the world; data communication outside Kuwait being provided through the satellite link. Also, the telephone and data communication services were provided in and around the Ahmadi industrial area."

203. Iraq argues that "[t]he costs of [general] communications should be treated in a similar form of purchasing assets and equipment." Iraq also complains that the communications costs are not properly analyzed, making it difficult to understand the nature of the costs claimed.

204. In response to the Panel's interrogatories asking the Claimant to clarify the nature and scope of these costs, the Claimant replied as follows:

> "In the immediate aftermaths of the liberation, temporary communication facilities were essential for the WBC exercise, and were accordingly installed. These facilities became largely redundant at the conclusion of the WBC exercise. The associated costs fell within the criteria defining the WBC Claim as properly 'belonging' to the WBC Claim.
>
> "Complete reconstruction of KOC's communications system was necessitated by the extent of damage and destruction resulting from the invasion and occupation. A new system was required and installed. The costs of the new system were allocated between the various segments of the Physical Assets Claim. These costs are distinct from the costs included in the WBC Claim."

205. The Panel notes that the heading "Communications" includes a substantial amount of capital expenditure. Consequently, although the assets in question may have become "largely redundant" at the conclusion of the WBC Exercise as alleged by the Claimant, these assets may still have had some residual value. Accordingly, because the residual value of these assets cannot be calculated as at the end of the WBC Exercise, the Panel will apply its determination regarding the allocation of capital expenditure. See supra paragraphs 125-31.

206. Based on KOC's asset management records, the Panel estimates that the capital expenditure claimed under the heading "Communications" amounts to KD 3,275,646, or using the exchange rate 1 KD = US$3.45, to US$11,300,979.39/ Following the Panel's determination regarding the allocation of capital expenditure, 22 percent of this amount, or US$2,486,215, can be verified in the present Claim. The remaining 78 percent, amounting to US$8,814,764, must be verified in KOC's Physical Assets Claim. The Claimant may amend the latter claim to reflect the above allocation.

207. The Panel has also earlier held that an allocation of 20 percent be made for all common revenue expenditure. See supra paragraphs 139-40. The revenue expenditure claimed under the heading "Communications," which totals US$15,121,327, consists of costs incurred in supporting the Al-Awda project as a whole. Consequently, the Panel determines that 80 percent of the revenue expenditure claimed under the heading "Communications," amounting to US$12,097,062, can be verified in the present Claim. The remaining 20 percent, amounting to US$3,024,265, is to be verified in KOC's other claims. The Claimant may amend its other claims, identifying those

claims and the amount to be allocated to each such claim, to include the latter amount.

208. Based on the evidence before it and the results of the verification procedures employed, the Panel determines that the costs incurred by the Claimant in setting up a temporary communications system, in the amount of US$14,583,277, were necessary to support the execution of the WBC Exercise and, consequently, are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

8. Jebel Ali staging area

209. The Claimant seeks US$3,246,186 as compensation for costs recorded under the heading "Jebel Ali staging area." This cost heading is described as follows in the Accountants' Report:

> "The Jebel-Ali staging area, in the United Arab Emirates, was arranged and administered by Bechtel as a delivery, organization and collection point, for material, equipment, and supplies which had been ordered for the task which faced them. This staging post enabled items to be received and prepared in the period when it was not possible to enter Kuwait. It continued to function when Kuwait was liberated as the remaining communications, airport, and seaport in Kuwait were either inadequate for the task or were too dangerous to be used until all had been thoroughly checked for ordnance."

210. The Accountants explain that the heading "captures all the overhead costs associated with the set up and running of the operation in Jebel-Ali." The costs included are the following:

a. rental payments for warehousing and office space;

b. refurbishment of office facilities where appropriate and the installation of office equipment;

c. provision of computer facilities to effect management of the staging area; and

d. communications costs such as telephone and fax."

211. Iraq suggests that the costs incurred in connection with the Jebel Ali staging area are not fully compensable, arguing that "[t]he WBC exercise and firefighting activities were not the only direction which Jebel Ali was rendering service to. Many other activities were benefiting from it."

212. Asked by the Panel to clarify the purpose and use of the Jebel Ali staging area, the Claimant replied as follows:

> "Subsequent review has shown that the Jebel-Ali staging area was set up specifically to permit the mobilisation of manpower, equipment and services for the well blow-out activities and initial rehabilitation of basic facilities in Kuwait. Kuwait's ports having been destroyed or made useless by Iraqi forces, the most urgent task in the weeks during which the Jebel-Ali staging area was in use was to control the well-head fires; and the overwhelming use made of the facilities was for this purpose. A small proportion of the plant and equipment being trans-shipped through facilities in Dubai might have been for other emergency needs in Kuwait; but the full cost of the Jebel-Ali staging area was borne by KOC, and this cost is included exclusively in this WBC Claim, and not in any other claim."

213. As noted in paragraph 168, supra, the costs recorded under the heading "Jebel Ali staging area" include capital expenditure on buildings in the amount of US$371,000. Accordingly, following the Panel's determination regarding the allocation of capital expenditure, see supra paragraph 130, 22 percent of this amount, or US$81,620, can be verified in the context of the present Claim. The remaining 78 percent, amounting to US$289,380, is to be verified in KOC's Physical Assets Claim. The Claimant may amend the latter claim to reflect the above allocation.

214. The Panel has earlier held that 20 percent of all revenue expenditure that can be considered as common costs must be allocated to KOC's other claims. See supra paragraphs 139-40. The revenue expenditure claimed under the heading "Jebel Ali staging area," which totals US$2,875,186, consists of costs incurred in supporting the Al-Awda project as a whole. Consequently, the Panel determines that 80 percent of the revenue expenditure claimed under this heading, amounting to US$2,300,149, can be verified in the present Claim. The remaining 20 percent, amounting to US$575,037, is to be verified in KOC's other claims. The Claimant may amend its other claims, identifying those claims and the amount to be allocated to each such claim, to include the latter amount.

215. Subject to the above allocations, the Panel is satisfied, based on the evidence before it and the results of the verification procedures employed, that costs claimed under the heading "Jebel Ali staging area," in the amount of US$2,381,769, are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait.

9. Conclusion on KOC - Al-Awda costs

216. The Panel concludes that costs claimed under the heading "KOC - Al-Awda costs" in the total amount of US$391,556,669 have been incurred in the execution of the WBC Exercise and are compensable as loss, damage or injury sustained by the Claimant as a direct result of Iraq's invasion and occupation of Kuwait. This finding is without prejudice to the Panel's determination regarding the compensability of indirect costs incurred in fighting oil-well fires in the Wafra oil field. See infra paragraphs 218-221. The Panel's determinations are presented in the table below. The amounts are in United States dollars.40/

Cost heading/ Analysis	Total amount claimed	Total capital expenditure	Capital allocation	Total revenue expenditure	Common cost allocation	Other allocations	Amount compensable
Firefighter support	52,392,745 [para. 165]	19,795,591 [para. 174]	(15,440,561) [para. 174]	32,597,154	-	-	36,952,184 [para. 175]
Construction equipment	293,462,100 [para. 165]	200,000,000 [para. 179]	(156,000,000) [para. 179]	93,462,100	-	-	137,462,100 [para. 181]
Project management	145,839,509 [para. 165]	-	-	145,839,509 [para. 183]	(29,167,902) [para. 187]	-	116,671,607 [para. 188]
Support facilities	120,958,852 [para. 165]	46,448,000 [para. 193]	(36,229,440) [para. 193]	74,510,852 [n.38]	(14,703,283) [para. 194]	(994,435) [para. 192]	69,031,694 [para. 195]
Freight	65,791,081 [para. 165]	65,791,081 [para. 198]	(51,317,043) [para. 199]	-	-	-	14,474,038 [para. 200]
Communications	26,422,306 [para. 165]	11,300,979 [para. 206]	(8,814,764) [para. 207]	15,121,327 [para. 207]	(3,024,265) [para. 207]	-	14,583,277 [para. 208]
Jebel Ali staging area	3,246,186 [para. 165]	371,000 [paras. 168, 213]	(289,380) [para. 213]	2,875,186 [para. 214]	(575,037) [para. 214]	-	2,381,769 [para. 215]
Total	708,112,779 [para. 165]	343,706,651	(268,091,188)	364,406,128	(47,470,487)	(994,435)	391,556,669

217. The Panel's determinations in respect of capital and revenue expenditure are summarized in the table below. The amounts are in United States dollars.

Analysis	Amount claimed	Capital allocation	Common cost allocation41/	Amount compensable
Capital expenditure42/	343,706,651	(268,091,188)	-	75,615,463
Revenue expenditure43/	364,406,128	-	(48,464,922)	315,941,206
Total	708,112,779	(268,091,188)	(48,464,922)	391,556,669

C. Wafra

218. As described in paragraph 26, supra, the Claimant on 2 September 1996 amended the WBC Claim to the extent that it related to the WBC Exercise in the Wafra oil field. This amendment resulted in a reduction of the amount claimed by KD 265,278. The Panel notes that this reduction consists solely of direct firefighting costs and does not include costs incurred in supporting the firefighting effort in the area.

219. The Claimant states that "[t]o the extent that any of the support and/or common costs included in the WBC Claim were allocable to Wafra, these will have been negligible. The task of bringing the Wafra wells under control was straightforward, and required little support." Noting that "the wells in Wafra are low pressure wells and relatively little work was required to bring those wells under control," the Claimant argues that

> ". . . to the extent that any support and/or common costs paid to Bechtel by KOC might have been allocable to Wafra, none of those costs were charged by KOC to SAT--nor will they be, so that KOC will continue to bear the full loss."

220. In the Panel's view, the compensability of indirect costs is necessarily linked to the compensability of the direct costs to which they relate. Consequently, the Panel finds that under the legal arrangements in place between KOC and SAT, the indirect costs incurred in supporting the firefighting effort in the Wafra oil field, to the extent that they relate to the reduction made by the Claimant, are not compensable.

221. Taking note of the Claimant's statement that the Wafra oil field has special characteristics, which statement is supported by the record, the Panel estimates that the amount of indirect costs allocable to Wafra totals US$250,000. For the reasons stated above, the claim for these costs is rejected.

D. Summary

222. In view of the conclusions reached above, and subject to the determinations to be made with regard to incidental issues such as currency exchange rate, interest and claim preparation costs, the Panel determines that the loss, damage or injury for which compensation is being sought in the WBC Claim is compensable in this Claim in the amount of US$610,048,547. The Panel's findings are summarized below. The amounts are in United States dollars.

Analysis	KOC costs	KOC - Al-Awda costs	Global determinations	Total
Amount claimed	243,518,092	708,112,779	-	951,630,871
Amendment	(915,209)	-	-	(915,209)
Rejections				
KOC firefighting team	(2,804,390)	-	-	(2,804,390)
Wafra indirect costs	-	-	(250,000)	(250,000)
Allocations				
Capital expenditure	(20,273,023)	(216,774,145)	-	(237,047,168)
Common costs	(783,592)	(47,470,487)	-	(48,254,079)
Freight	-	(51,317,043)	-	(51,317,043)
Ordnance clearance	-	(994,435)	-	(994,435)
Total	218,741,878	391,556,669	(250,000)	610,048,547

VII. INCIDENTAL ISSUES

A. Currency exchange rate

223. The WBC Claim is made in United States dollars. The Claimant states that "[m]uch of the costs included in the claim were incurred and paid in that currency." Other principal currencies were sterling and United Arab Emirates dirham. When incurred in a currency other than United States dollars, the Claimant used a method according to which the costs incurred by Bechtel, the project manager, were converted into United States dollars using the month-end rate for the preceding month taken from the Financial Times (London).

224. According to the Accountants, "[a]pproximately $11,400,000 of the KOC recorded costs were originally incurred in Kuwaiti dinars." These costs were converted by the Claimant into United States dollars at the rate of US$3.45 = KD 1. The Accountants state that "[t]his rate is consistent with that used by the Asset Management Department of Bechtel ('AMD') and is a reasonable approximation of the market exchange rate for the period in which claimed costs were incurred."

225. Iraq objects to the exchange rate used by the Claimant to convert costs incurred in Kuwaiti dinars to United States dollars. According to

Iraq, the exchange rate US$3.45 = KD 1 "was certainly not valid during the period when the contract was being concluded." Without presenting or citing any documentary support, Iraq argues that "[t]he true rate of exchange was five Kuwaiti dinars per U.S. dollar." As regards costs incurred in currencies other than Kuwaiti dinar, Iraq states such costs "should be converted using either exchange rates of the payment day defined in the documents and invoices or the average exchange rate prevailing in the month of payment."

226. The Panel notes that the bulk of the costs claimed in the WBC Claim was incurred directly in United States dollars and that these costs do not raise, therefore, any currency exchange rate issues. As regards the exchange rates used by the Claimant to convert costs originally incurred in Kuwaiti dinars, or in currencies other than Kuwaiti dinars, the Panel finds that those rates constitute reasonable approximations of the applicable market rates prevailing at the relevant times. Therefore, subject to the Panel's finding in paragraph 91, supra, the Panel accepts the conversion rates used by the Claimant.

B. Interest

227. The Claimant seeks interest on the whole of the amount sought "at such reasonable commercial rate and for such period as the Commission may consider appropriate." The Claimant suggests 15 September 1991, a date after the mid-point of the WBC activity, as the starting point for the interest period.

228. The relevant Governing Council decision in this connection is decision 16, "Awards of Interest."44/ According to that decision, "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award." In decision 16 the Governing Council further specified that "[i]nterest will be paid after the principal amount of awards," while postponing decision on the methods of calculation and payment of interest.

229. Accordingly, the Panel must determine "the date the loss occurred" within the meaning of Governing Council decision 16. The Panel finds that the "loss" that forms the subject matter of the WBC Claim is the costs for which compensation is being sought. Thus, the "date" the loss occurred coincides with the period during which the relevant payments were made, this period approximately extending from October 1990 until the end of July 1992. Given that the costs were incurred over a period of time and

consisted of numerous individual payments, and given that they were incurred more intensively during the latter half of the relevant period, the Panel fixes 15 October 1991 as the date the loss occurred for purposes of interest calculation.

230. In view of the above, the Panel recommends that interest be awarded on the WBC Claim as of 15 October 1991. Pursuant to the Panel's determination in paragraph 61, supra, the Claimant shall be paid interest on behalf of Kuwait's public oil sector as a whole.

C. Claim preparation costs

231. The Panel notes that the Claimant does not seek claim preparation costs at the present time, stating that lawyers and accountants retained by the Claimant for the purposes of the WBC Claim are also working on other claims to be filed by the Claimant with the Commission. The Claimant states that it intends to deal with the preparation costs in conjunction with one of KOC's later claims, or to authorize KPC to claim such costs.45/

232. In view of the above, the Panel finds no reason to pronounce itself on the issue of claim preparation costs.

VIII. RECOMMENDATIONS

233. In view of the foregoing, the Panel makes the following recommendations:

a. The Claimant KUWAIT OIL COMPANY (the "Claimant"), on behalf of Kuwait's public oil sector as a whole, is to be paid the amount of US$610,048,547 as compensation for the costs incurred in the execution of the Well Blowout Control Exercise as a direct result of Iraq's invasion and occupation of Kuwait;

b. The Claimant, on behalf of Kuwait's public oil sector as a whole, is to be paid interest on the principal amount specified in paragraph 233 (a), supra, as of 15 October 1991, pursuant to Governing Council decision 16;

c. The claim for the costs incurred in connection with the work performed by the Claimant's own firefighting team, in the amount of US$2,804,390, is rejected;

d. The claim for the indirect costs incurred in fighting oil-well fires in the Wafra oil field, in the amount of US$250,000, is rejected;

e. The Claimant may amend its Physical Assets and Related Damage Claim, filed with the UNCC on 27 June 1994, to include 78 percent of capital expenditure claimed in the present Claim, in the amount of US$237,047,168, which amount cannot properly be verified in the present Claim;

f. The Claimant may amend its Physical Assets and Related Damage Claim, referred to in paragraph 233 (e), supra, to include 78 percent of KOC - Al-Awda costs claimed under the heading "Freight," in the amount of US$51,317,043, which amount cannot properly be verified in the present Claim;

g. The Claimant may amend its other claims, identifying such claims and the amount to be allocated to each such claim, to include 20 percent of common KOC costs claimed under the headings "Sundries/legal costs" and "Sundries/consulting costs" and common KOC - Al-Awda costs claimed under headings "Project management and related services," "Support facilities," "Communications" and "Jebel Ali staging area," in the total amount of US$48,254,079, which amount cannot properly be verified in the present Claim; and

h. The Claimant may amend its Removal of Unexploded Ordnance Claim, filed with the UNCC on 30 July 1993, to include the KOC - Al-Awda costs relating to the removal of unexploded ordnance claimed under the heading "Support facilities," in the amount of US$994,435, which amount cannot properly be verified in the present Claim.

Geneva, 15 November 1996

(Signed) Mr. Allan Philip
Chairman

(Signed) Mr. Bola A. Ajibola
Commissioner

(Signed) Mr. Antoine Antoun
Commissioner

Notes

1/ K.S.C. stands for "Kuwait Shareholding Company."

2/ This amount is exclusive of interest and the costs of claim preparation. KOC claims interest "on the whole amount of the WBC Claim at such reasonable commercial rate and for such period as the Commission may consider appropriate." KOC does not seek the costs of claim preparation at the present time. See infra paragraph 231.

The WBC Exercise also covered the Wafra oil field, which is on the on-shore portion of the Divided Zone north of the international boundary between Kuwait and Saudi Arabia. In its initial submission the Claimant stated that it had not sought to recover any costs relating to the WBC work performed on that field from Getty Oil Company, which at the time of the invasion was the relevant company, or its successor, Saudi Arabia Texaco ("SAT"), although the former company at the time had, and the latter currently has, a concession to Saudi Arabia's 50 percent share therein.

The Claimant subsequently amended the Claim as regards the costs incurred in fighting fires in the Wafra oil field. See infra paragraph 26.

3/ S/AC.26/1992/10.

4/ "Report Submitted by the Executive Secretary to the Governing Council in Accordance with Article 16 of the Provisional Rules for Claims Procedure (Report No. 9)" (S/AC.26/1994/R.27).

5/ Following a procedure adopted by the Governing Council at its session held on 13 December 1995, instructing the Executive Secretary "to inform all Governments that have submitted claims which have already been sent to Panels of Commissioners that they may identify the identities of individuals and any other information that is confidential or privileged from a business perspective" so that such information could be removed from the documents before they are provided to others, the Claimant in a letter dated 14 February 1995 informed the secretariat that it had no objection to "[the] release [of] the relevant documents pertaining to the evaluation of the WBC Claim to the bodies and Government elected by the UNCC for their contribution towards reviewing the above claim."

6/ Article 38 (d) of the Rules provides as follows:

"Unusually large or complex claims may receive detailed review, as appropriate. If so, the panel considering such a claim may, in its discretion, ask for additional written submissions and hold oral proceedings. In such a case, the individual, corporation, Government, international organization or other entity making the claim may present the case directly to the panel, and may be assisted by an attorney or other representative of choice. The panel will complete its review of the case and report in writing through the Executive Secretary its recommendations to the Governing Council within twelve months of the date the claim was submitted to the panel."

7/ The KOC and KOC - Al-Awda accounting systems are explained in paragraph 93, infra.

8/ Governing Council decision 35, "Decision Concerning Further Procedures for Review of Claims Under Article 38" (S/AC.26/Dec. 35), reads in relevant part as follows:

"With respect to claims requiring additional proceedings under articles 36 and 38(d), the panel shall determine whether it requires time in excess of that available under article 38(d) to complete its

review of the claims and the report and recommendations to the Governing Council. If the panel determines that such excess time is required, this determination shall be considered a request to the Governing Council for additional time pursuant to article 39. The Governing Council hereby approves up to six additional months in that event. A panel that avails itself of such additional time shall so inform the Governing Council through the Executive Secretary."

9/ While Iraq presented a procedural request at the oral proceedings, its representatives stated that they were attending the proceedings "under protest." Iraq's attendance in the oral proceedings as well as the composition of its delegation were originally announced to the secretariat without such reservations.

10/ For the Panel's view regarding the exchange rate to be applied to convert the reduction into the United States dollars see infra paragraph 91.

11/ The terms "Al-Awda" and "Al-Taneer" are used in this report for ease of reference. The Claimant acknowledges that there is no clear dividing line between the projects connoted by the two terms.

12/ OFAC administered the sanctions regulations in the United States.

13/ Governing Council decision 7, "Criteria for Additional Categories of Claims" (S/AC.26/1991/7/Rev.1).

14/ See Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause" (S/AC.26/1992/15), paragraph 9 (IV); Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), paragraphs 10, 17 and 19.

15/ The Security Council also acted under Chapter VII when making resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991). Under article 29 of the Charter, "[t]he Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions."

16/ Accord "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3), at 9:

> "Resolution 687 (1991) reaffirmed that Iraq was liable, under international law, for direct losses, damages or other injuries as a result of its unlawful invasion and occupation of Kuwait. Iraq's liability under international law for such losses having been reaffirmed by the Security Council, the issues remaining for the Panel are to determine the proper scope of causality--that is, determining for any particular claim or category of claims whether such loss or losses are a 'direct' result of Iraq's invasion and occupation--and to assess the amount of the losses incurred."

17/ See "Report on the situation of human rights in Kuwait under Iraqi occupation, prepared by Mr. Walter Kälin, Special Rapporteur of the Commission on Human Rights, in accordance with Commission resolution 1991/67" (E/CN.4/1992/26) (the "Kälin Report").

18/ The quoted sections were included in section II of the Secretary-General's report, which the Governing Council was instructed to take into account when implementing Security Council resolution 687 (1991). See paragraph 5 of Security Council resolution 692 (1991)(S/RES/692/1991).

19/ See supra paragraph 26.

20/ As the amendment involves a reduction in direct firefighting costs, see infra paragraph 218, it is reflected in the amount claimed under the heading "International firefighting and support services contractors." The amount originally sought under this heading was US$207,794,621.

21/ The excluded cost codes, the balance of which is claimed in KOC's Physical Assets Claim, were as follows:

D	Drilling support
F	Facilities firefighting
G	Crude oil production
H	Oil field support
K	Kuwait (owner) companies
L	Local marketing
M	Marine facilities
N	Power distribution and others
P	Pipelines
R	Refineries
T	Crude oil transfer
U	Backcharge
Y	Major projects

At the oral proceedings the Claimant explained that the costs incurred under the COCO code F ("Facilities firefighting") refer to costs incurred with regard to reinstating KOC's own, "peace-time" firefighting facilities.

22/ The remaining post-capping costs are claimed in KOC's Physical Assets Claim. See supra paragraph 38.

23/ Given that the amendment made by the Claimant involves a reduction in direct firefighting costs, see infra paragraph 218, it is reflected in revenue expenditure under KOC costs. The original amount of revenue expenditure was US$217,527,037.

24/ The systems tests were designed to verify whether the KOC and KOC - Al Awda systems worked effectively and the substantive tests were used to control whether the costs recorded were supported by appropriate documentation.

25/ The numbers do not reflect the reduction in the amount claimed subsequently made by the Claimant. See supra paragraphs 26 and 91. Cf. paragraph 112.

26/ The Al-Tameer project was officially launched by a KOC circular dated 25 December 1991.

27/ Although the planning for the Al-Awda project commenced already in September 1990, see supra paragraph 31, it appears that no significant capital expenditure was incurred prior to March 1991, when the implementation of the WBC Exercise began.

28/ The figures include capital expenditure.

29/ Including amendment.

30/ The amount does not include any capital expenditure. See supra paragraph 143.

31/ The Panel understands that compensation for these losses is claimed in KPC's Production and Sales Loss Claim, filed with the UNCC on 20 May 1994.

32/ Including amendment. See supra note 20.

33/ The basis of the Panel's estimate has been explained in paragraph 133, supra.

34/ The basis of the Panel's estimate has been explained in paragraph 133, supra.

35/ The Claimant indicated in its responses to the Panel's interrogatories that Bechtel also managed the Oil Recovery Programme, which is covered by KOC's Environmental Damage Claim, filed with the UNCC on 18 April 1994.

36/ The claim was filed with the UNCC on 30 July 1993.

37/ The basis of the Panel's estimate has been explained in paragraph 133, supra.

38/ This amount is arrived at by deducting all of the capital expenditure claimed under the present heading, US$46,448,000, from the total amount claimed (US$120,958,852) and by then deducting from the resulting figure, US$74,510,852, the ordnance clearance costs (US$994,435).

39/ The basis of the Panel's estimate has been explained in paragraph 133, supra.

40/ The table is for presentation purposes only.

41/ Including ordnance clearance cost allocation.

42/ Including freight.

43/ Excluding freight.

44/ Governing Council decision 16, "Awards of Interest" (S/AC.26/1992/16).

45/ KPC filed a claim for compensation of claim preparation costs on 8 September 1995.